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Administration of justice at the United Nations

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Report of the Secretary-General

Summary

The General Assembly, in its resolution 61/261, decided to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice for the United Nations. The new system became operational on 1 July 2009.

The Secretary-General views the implementation and functioning of the new system of administration of justice as a success and a significant improvement over the old system. The Secretary-General bases this view on the substantial accomplishments which have been achieved during the first year of operation. For example, whereas the old system was noted for the length of time (often years) required to adjudicate a case, the new United Nations Dispute Tribunal takes an average of six months to dispose of a case, which is considerably more efficient than the bodies of the old system. Through the consultative mechanism, staff have expressed confidence in the new system — a major change of view in a short space of time.

During the past year, the Management Evaluation Unit has responded to more than 425 requests for review, the Office of Staff Legal Assistance has resolved over 50 per cent of the more than 900 cases received, the United Nations Dispute Tribunal has disposed of 220 of 510 cases and the United Nations Appeals Tribunal has disposed of 64 of 110 cases.* These accomplishments have also been the result of the increased productivity, often using very strained resources, of both the units representing the Secretary-General as respondent in cases before the Tribunals and the units servicing the Tribunals.

* A/65/150.

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The Secretary-General notes that a high percentage of cases coming before the Organization's "first responders" (that is, the Office of the United Nations Ombudsman and Mediation Services, the Office of Staff Legal Assistance and the Management Evaluation Unit) were settled informally without recourse to the formal system.

While the new system is better resourced and more professional, and despite the many accomplishments in this successful reform, the experience of the first year has demonstrated that there are some elements of the new system that require adjustment, strengthening or further consideration in order for the system to work optimally.

In its resolution 63/253, the General Assembly requested the Secretary-General to conduct a review of the new system of administration of justice and to report thereon to the Assembly at its sixty-fifth session. In that same resolution, and in its resolution 64/233, the Assembly requested the Secretary-General to provide data and information on the functioning of the new system and related matters. The present report provides a consolidated response to those requests, including, when appropriate, resource implications.

The present report contains a request for additional resources amounting to $7,627,500 under sections 1, 2, 8, 17, 21, 28C, 28D, 28E, 28G and 36 of the programme budget for the biennium 2010-2011 for the more urgent requirements of the new system of administration of justice, bearing in mind the experience to date.

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* These numbers include cases transferred from the old system (from the Joint Appeals Boards/Joint Disciplinary Committees and the United Nations Administrative Tribunal) as well as newly filed cases since 1 July 2009.

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I. Overview

1. The General Assembly, by its resolutions 61/261, 62/228 and 63/253, established a new system of administration of justice for staff of the Secretariat and the separately administered funds and programmes. The new system replaced a largely peer-review system that had functioned for more than 60 years but which had become, in the view of the Assembly, "slow, cumbersome, ineffective and lacking in professionalism". The Assembly envisaged the new system as being an "independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike".

2. The formal system of justice has several new elements. It has two tribunals, the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, which are staffed by professional judges and supported by Registries in Geneva, Nairobi and New York. In accordance with the view of the General Assembly that legal assistance should be provided to staff, the new system also includes the Office of Staff Legal Assistance, staffed by professional legal officers in Addis Ababa, Beirut, Geneva, Nairobi and New York. In recognition of the need for the system to be independent, the Assembly created the Office of Administration of Justice, which administers the elements of the formal system, providing administrative, operational and technical support to the Tribunals, Registries and the Office of Staff Legal Assistance.

3. Another new element of the formal system is management evaluation, which constitutes the mandatory first step of the formal system of administration of justice. The Management Evaluation Unit, staffed by professional legal officers, located in the office of the Under-Secretary-General for Management, conducts a first review of a contested decision. The Unit is designed to give management a chance to correct an improper decision or to provide acceptable remedies in cases where the decision has been flawed, thereby reducing the number of cases that proceed to formal litigation.

4. In addition to the newly created structures, many offices and units which were part of the prior justice system continue to be part of the new system. The requirements of a fully professional system with a two-tiered formal adjudication mechanism, as well as increased volume in the system generally, have placed additional burdens on these existing units, which are described below.

5. The establishment of the new system also saw the abolition of the peer-review mechanisms of the old system, effective 1 July 2009, and of the United Nations Administrative Tribunal, effective 1 January 2010. The pending caseloads from these bodies, a total of 312 cases, were transferred to the new Tribunals. In order to prevent the backlog of cases from overwhelming the new system, the General Assembly appointed three ad litem judges for the United Nations Dispute Tribunal as well as judicial staff to support them.

II. Review of the new formal system of justice

A. Management Evaluation Unit

6. The Management Evaluation Unit[1] is located in the Office of the Under-Secretary-General for Management. The core functions of the Unit are to: (a) conduct prompt management evaluations of contested administrative decisions relating to contracts of employment or terms and conditions of appointment and determine whether they comply with the Organization's applicable regulations, rules and policies; (b) assist the Under-Secretary-General for Management to provide staff members requesting management evaluation with a prompt and reasoned response regarding the outcome of the evaluation; and (c) assist the Under-Secretary-General to ensure managerial accountability by ensuring the compliance of managers with their responsibilities in the management of the human and financial resources of the Organization. Through such management evaluations the Administration has the opportunity to correct decisions involving managerial error to prevent unnecessary litigation before the Dispute Tribunal, and to bring about significant cost savings.

7. From its inception on 1 July 2009 to 30 June 2010, the Management Evaluation Unit received a total of 428 requests for management evaluation, a 95 per cent increase over the number of cases received for administrative review under the former system during the corresponding period between 1 July 2008 and 31 March 2009. Furthermore, in each quarter since its inception there has been a significant increase in the number of requests submitted by staff members to the Management Evaluation Unit. There was a 39 per cent increase in cases submitted between 1 January and 31 March 2010 over the number of cases submitted between 1 October and 31 December 2009, and a 20 per cent increase in the number of cases submitted between 1 April and 30 June 2010 over the number of cases submitted between 1 January and 31 March 2010.

8. These figures show that the number of users of the new system is already greater than was the case in the prior system, and that the numbers are still increasing. The trend, demonstrated by the number of cases submitted to the Management Evaluation Unit, suggests that staff members are increasingly aware of the existence of the new system, and have confidence that their issues will be addressed fairly and in a timely manner. As staff become more aware of the system, and how to access it, that upward trend is likely to continue.

9. The staffing complement of the Management Evaluation Unit is comprised of a Chief (P-5), who reports to the Director of the Office of the Under-Secretary-General for Management, three Legal Officers (P-4), one Legal Officer (P-4) (general temporary assistance) and four Legal Assistants (1 General Service (Principal level) and 3 General Service (Other level)). However, the current staffing resources of the Unit are inadequate to meet its mandate, especially in the light of the consistent upward trend in the number of requests it receives. Management evaluations are time-consuming and labour intensive, requiring extensive consultation with staff and management and thorough and complex legal research, analyses, drafting and review. The process takes place within strictly imposed

[1] The separately administered funds and programmes handle management evaluations independently. Their operations are not described in the present report.

deadlines (30 days for requests for management evaluation submitted by staff located at Headquarters, 45 days for staff located in offices away from Headquarters).

10. Response from the Management Evaluation Unit in a thorough and timely manner is essential to the successful fulfilment of its mandate. At its present staffing level, the Unit may not be in a position to conduct quality management evaluations within the deadlines imposed by its statute if the upward trend of requests continues. Timely, high quality management evaluations provide the Organization with a key opportunity to correct administrative decisions involving managerial error at an early stage. If the Unit is not in a position to address all requests in a timely way, it would have a negative impact on the rights of staff contesting administrative decisions, possibly resulting in the Dispute Tribunal ordering measures of compensation for delays and procedural irregularities or in unnecessary litigation before the Tribunal. This, in turn, would result in increased overall costs to the Organization.

B. United Nations Dispute Tribunal

1. Composition of the Dispute Tribunal

11. On 2 March 2009, the General Assembly elected three full-time judges and two half-time judges to the Dispute Tribunal. Subsequently, the Assembly elected three ad litem judges for a period of one year to assist in handling the backlog of cases transferred from the Joint Appeals Boards and the Joint Disciplinary Committees. They are:

(a) Judge Vinod Boolell (Mauritius), full-time judge based in Nairobi;

(b) Judge Memooda Ebrahim-Carstens (Botswana), full-time judge based in New York;

(c) Judge Thomas Laker (Germany), full-time judge based in Geneva;

(d) Judge Goolam Hoosen Kader Meeran (United Kingdom of Great Britain and Northern Ireland), half-time judge;

(e) Judge Coral Shaw (New Zealand), half-time judge;

(f) Judge Michael Adams (Australia), ad litem judge based in New York;

(g) Judge Jean-François Cousin (France), ad litem judge based in Geneva;

(h) Judge Nkemdilim Amelia Izuako (Nigeria), ad litem judge based in Nairobi.

12. In accordance with article 4 of the Statute of the Dispute Tribunal, following a drawing of lots, it was resolved that Judge Ebrahim-Carstens (full-time judge) and Judge Meeran (half-time judge) would serve terms of three years, renewable for seven years. The other full-time judges and half-time judge are serving non-renewable seven-year terms of office.

13. On 29 March 2010, by its decision 64/553, the General Assembly extended the tenure of the three ad litem judges for one additional year, beginning on 1 July 2010, to continue to handle the backlog of cases from the old system. Because the New York ad litem judge, Judge Adams, was unable, for personal reasons, to accept

a second term of office, the Assembly appointed a replacement, Judge Marilyn Kaman, from the United States of America, on 18 June 2010.

2. Election of the President

14. In accordance with article 1 of the then provisional rules of procedure of the Dispute Tribunal, on 24 June 2009, the judges elected Judge Boolell as President for a period of one year, effective 1 July 2009. During its plenary meeting in Nairobi, the Dispute Tribunal elected Judge Laker as President for a period of one year effective 1 July 2010.

3. Plenary meetings

15. During the reporting period, the judges of the Tribunal held three plenary meetings in: New York (22 to 26 June 2009); Geneva (30 November to 2 December 2009); and Nairobi (28 June to 2 July 2010). During the first plenary meeting, the judges discussed and adopted the rules of procedure of the Dispute Tribunal, which were approved by the General Assembly on 16 December 2009 without amendment, and elected the President of the Tribunal. During the second plenary meeting, the judges discussed and agreed on a wide range of administrative and legal issues concerning their work practices. During the third plenary, the judges: (a) conducted a round-table discussion on the first year of the Tribunal's operation; (b) discussed amendments to the rules of procedure; (c) held a working session with the stakeholders of the internal justice system, chaired by the Chair of the Internal Justice Council, Ms. Kate O'Regan; and (d) met with the Director of the Office of the United Nations Ombudsman and Mediation Services and the regional ombudsman for the United Nations in Nairobi. The Dispute Tribunal also established committees on rules of procedure and directives on practice.

4. General activity of the Tribunal

16. During the reporting period, the Dispute Tribunal received a total of 510 cases, of which: (a) 169 were transferred on 1 July 2009 from the former Joint Appeals Boards and Joint Disciplinary Committees; (b) 143 were transferred from the United Nations Administrative Tribunal on 1 January 2010; and (c) 198 were new cases filed between 1 July 2009 and 30 June 2010. The Tribunal delivered 213 judgements. As at 30 June 2010, 290 cases were pending, including 37 cases from the Joint Appeals Boards and the Joint Disciplinary Committees, 131 cases from the Administrative Tribunal and 122 new cases. The three Registries of the Dispute Tribunal, located in Geneva, Nairobi and New York, provided substantive, administrative and technical support to the Tribunal.

5. Cases transferred to the Dispute Tribunal from the old system

17. On 1 July 2009, following the abolition of the Joint Appeals Boards and Joint Disciplinary Committees in Geneva, Nairobi, New York and Vienna, 169 cases pending before those entities were transferred to the Dispute Tribunal: 61 cases were transferred to the Registry in Geneva; 55 cases were transferred to the Registry in Nairobi; and 53 cases were transferred to the Registry in New York.

18. The judges agreed on the geographical distribution of cases among the three locations of the Dispute Tribunal, allowing for a relatively even distribution of cases among the three Registries.

19. On 1 January 2010, 144 cases were transferred from the United Nations Administrative Tribunal to the Dispute Tribunal. These cases distributed among the Registries of the Dispute Tribunal as follows: 51 cases to Geneva, 41 cases to Nairobi and 52 cases to New York.

6. New applications received in 2009

20. From 1 July 2009 to 30 June 2010, the Dispute Tribunal received a total of 198 new applications. On average, five to six applications were filed each month in each Registry.

7. Cases disposed of by the Dispute Tribunal in 2009-2010

21. The Dispute Tribunal disposed of 220 cases in 2009-2010. The Geneva Registry disposed of 113 cases while the Nairobi and New York Registries disposed of 44 and 63 cases, respectively. On average, the Registries disposed of approximately 18 cases per month.

8. Number of judgements, orders and hearings

22. During the period from 1 July 2009 to 30 June 2010, the Dispute Tribunal issued 213 judgements on both the merits of cases and interlocutory matters. The Tribunal also issued a total of 587 orders and held 320 hearings. The average time taken to dispose of a case was six months.

9. Cases referred to the Mediation Division, Office of the United Nations Ombudsman and Mediation Services

23. The Dispute Tribunal identified 10 cases suitable for mediation and referred them to the Mediation Division in the Office of the United Nations Ombudsman and Mediation Services.

10. Cases pending before the Dispute Tribunal as at 30 June 2010

24. As of 30 June 2010, the Dispute Tribunal had 290 cases pending, of which: 37 were the remainder of those transferred by the former Joint Appeals Boards and Joint Disciplinary Committees; 131 were transferred from the United Nations Administrative Tribunal and 122 were new cases. At the Geneva Registry there were 84 cases pending; at the Nairobi Register there were 89 cases pending; and 117 cases were pending at the Registry in New York.

11. Subject matter of cases before the Dispute Tribunal

25. The nature of cases before the Dispute Tribunal can be divided into seven categories: (a) appointment; (b) benefit, entitlement and classification; (c) disciplinary matters; (d) non-promotion; (e) non-renewal of appointment; (f) termination and separation from service; and (g) other. The greatest number of cases are in the category of non-renewal.

12. Issues relating to staffing of the Dispute Tribunal and its Registries

26. As detailed above, the Dispute Tribunal and its Registries in Geneva, Nairobi and New York have a very heavy caseload. The appointment and subsequent extension of three ad litem judges has allowed the Dispute Tribunal to make

significant progress in addressing the backlog of cases inherited from the old system. However, in light of the new cases filed, it is clear that a backlog will quickly emerge if judicial capacity is reduced to three full-time judges and two part-time judges at the end of June 2011. For that reason, it is recommended that the General Assembly appoint a second full-time judge to each of the three Registries. These judges would require support from legal officers and administrative staff. In order for the Registries to function adequately, the posts currently supporting the ad litem judges would need to be regularized.

27. The Secretary-General feels that the added flexibility to the system provided by the half-time judges has been very helpful, in particular in forming three-judge panels, when required. In light of their valuable role in the new system, the General Assembly may wish to consider strengthening a flexible judicial capacity.

13. Non-staffing related issues

28. Pursuant to General Assembly resolution 63/253 (article 11.5 of the statute of the Dispute Tribunal and article 10.8 of the statute of the Appeals Tribunal), judgements must be published in the official language used by the staff member in his or her submission. Moreover, as the judges and staff of both Tribunals use the two working languages of the United Nations, English and French, as was the case with the United Nations Administrative Tribunal, judgements need to be published in both languages. In this way, the judgements are more easily understood by all staff of the Organization. In addition, the appearance of applicants and witnesses in oral hearings frequently requires interpretation, and the Tribunal itself must be able to function in both working languages. It is therefore imperative that interpretation and translation support be provided, as required.

29. Despite these important mandates, no provisions were made in the current budget for the Office of Administration of Justice for translation and interpretation services. The Office has been informed by the Department for General Assembly and Conference Management that it would require additional staffing in Geneva, Nairobi and New York to provide the translation and interpretation services needed to give full effect to the General Assembly's mandates. Under current budgetary provisions, it will not be possible for the Office to fulfil the language mandates set by the Assembly or to provide adequate language support to allow the Dispute Tribunal to function fully in both working languages.

30. Another critical facet of daily operations not considered in the process leading to the establishment of the new system was the matter of the premises where the Dispute Tribunal would hold public hearings. In light of the requirement that the new system be professionalized and that the hearings of the Tribunal, generally, be open to the public, facilities adequate for a professional court, which are of sufficient size to permit public access, must be constructed at each of the Registries.

31. In Geneva and Nairobi, the premises that have been made available are not outfitted to allow for simultaneous interpretation or access of the judges, staff and parties to the electronic case management system. In New York, owing to space limitations and the capital master plan, the Dispute Tribunal has held hearings in large conference rooms when space was available and in small conferences rooms by necessity.

32. Also as a result of the capital master plan, it has been necessary to construct a courtroom space in the temporary premises of the Office of Administration of Justice. Due consideration in the planning phase has been given to ensuring that as much as possible of the equipment and furnishings of the temporary space can be moved to the permanent premises of the Dispute Tribunal after the completion of the capital master plan. It should be noted, however, that neither the construction of a temporary courtroom nor the construction of a permanent courtroom space for the Dispute Tribunal was provided for when the Office of Administration of Justice was established. Similarly, facilities must also be constructed in Geneva and Nairobi, which have not been provided with such accommodation.

33. One of the important elements of the new system is that it is decentralized. The Dispute Tribunal and its Registries are located in Geneva, Nairobi and New York. The Tribunal serves staff located in duty stations around the world, with each Registry serving a substantial geographic region. The success of the decentralization relies heavily on the ability of the Tribunal and its Registries to communicate among themselves and with the parties and witnesses in cases before the Tribunal.

34. The 2008-2009 budget for the Office of Administration of Justice made provision for the purchase of videoconferencing equipment. Videoconferencing is an effective means of allowing decentralized offices to interact on a regular basis despite geographic distance. When the Dispute Tribunal holds hearings, it is critical that staff members be able to participate fully and that the parties and judges be able to assess the demeanour of witnesses appearing before them. Since regular travel for either of these purposes would be prohibitively expensive, it was envisaged that these activities would primarily be carried through videoconferencing. There are also, however, significant costs associated with videoconferencing, and the current funding for communications is inadequate to allow for the effective use of videoconferencing by the Tribunal and its Registries.

35. Moreover, even if videoconferencing was readily available for communication between the various locations of the Dispute Tribunal, the judges and the Registrars must periodically meet in person to discuss common problems and develop uniform responses to them. In addition, one critical aspect of maintaining a professional system is providing the judges and legal staff with training opportunities so as to enhance their legal skills and allow them to take part in intellectual discourse among their juristic peers. The budget did not contemplate the holding of plenary meetings by the judges and Registrars of the Dispute Tribunal. The judges and legal staff of the Registries are also routinely invited to legal symposiums, but are unable to attend owing to the severe budgetary restrictions on official travel, which greatly impedes their ability to interact with their peers.

C. United Nations Appeals Tribunal

1. Composition of the United Nations Appeals Tribunal

36. On 2 March 2009, the General Assembly elected the following seven judges to the United Nations Appeals Tribunal:

(a) Judge Inés Weinberg de Roca (Argentina);

(b) Judge Jean Courtial (France);

(c) Judge Sophia Adinyira (Ghana);

(d) Judge Mark P. Painter (United States of America);

(e) Judge Kamaljit Singh Garewal (India);

(f) Judge Rose Boyko (Canada);

(g) Judge Luis María Simón (Uruguay).

37. In accordance with article 3.4 of the statute of the Appeals Tribunal, following a drawing of lots, four of the judges are serving seven-year terms of office and three judges initial three-year terms. Judge Courtial, Judge Painter and Judge Singh Garewal, who were elected for a term of three years, may be reappointed to the Appeals Tribunal for a further non-renewable term of seven years.

2. Election of the President and Vice-Presidents

38. In accordance with article 1 of the then provisional rules of procedure of the Appeals Tribunal, at its plenary meeting on 24 June 2009, the Tribunal elected Judge Weinberg de Roca as President, and Judge Courtial and Judge Adinyira as first and second Vice-Presidents, respectively. On 30 June 2010, the Appeals Tribunal elected Judge Courtial as President and Judge Adinyira and Judge Garewal as first and second Vice-Presidents, respectively, for the period from 1 July 2010 to 30 June 2011.

39. The judges of the Appeals Tribunal held a plenary meeting from 20 to 24 June 2009. During that meeting, the judges discussed and adopted their rules of procedure, which were approved by the General Assembly on 16 December 2009 without amendment. The Appeals Tribunal also held plenary meetings to deal with administrative and operational questions at the beginning and the end of its two sessions, on 15 and 30 March, and on 22 and 26 June 2010, respectively.

3. Judicial statistics

40. During the reporting period, the Appeals Tribunal received a total of 110 appeals, including 10 against the United Nations Joint Staff Pension Board, 14 against the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), and a total of 86 cases appealing judgements and orders of the United Nations Dispute Tribunal, 53 by staff members and 33 by the Administration.

41. The Appeals Tribunal held its first session from 15 March to 1 April in Geneva and its second session from 21 June to 2 July 2010 in New York. During its first session, the Tribunal rendered 33 judgements and during its second session it rendered 31 judgements.

4. Outcome of disposed cases

42. During the period covered by the present report, the Appeals Tribunal rendered 64 judgements. Nine judgements were rendered in appeals against the United Nations Joint Staff Pension Board, of which 8 were rejected and 1 remanded to the Standing Committee of the Pension Board. In addition, the Appeals Tribunal considered one request for reconsideration of a prior judgement in an appeal against the Pension Board, upholding the original dismissal.

43. Thirteen judgements were rendered on appeals filed by UNRWA staff members against decisions by the UNRWA Commissioner-General: 10 appeals were rejected and 3 were entertained. In addition, the Appeals Tribunal considered and dismissed one request for reconsideration of a prior judgement.

44. The Appeals Tribunal rendered 40 judgements in cases appealing judgements of the Dispute Tribunal, of which 28 were filed by staff members and 14 on behalf of the Secretary-General. In addition, two cross-appeals filed on behalf of the Secretary-General were considered by the Appeals Tribunal in the same judgements as the appeals of the corresponding staff members. Of the 28 appeals filed by staff members, 23 were rejected, and 5 were entertained in whole or in part. Of the 14 appeals filed by the Secretary-General, 10, including 1 cross-appeal, were rejected, and 4 appeals, including 1 cross-appeal, were entertained in whole or in part.

5. Issues relating to the first year of functioning of the United Nations Appeals Tribunal and its Registry

45. In terms of funding, the Appeals Tribunal was modelled on the International Labour Organization (ILO) Administrative Tribunal (ILOAT). Judges are paid a stipend per judgement, with the principal drafter being paid $2,400 and the additional signatories receiving $600. As with the ILOAT, the judges sit in sessions to deliberate on cases and render judgement.

46. This process relies upon substantial preparation of the cases by the legal and administrative staff of the Registry of the Appeals Tribunal. The ILOAT supports its operations with 6 full-time Professional legal staff, 3 General Service staff and the services of other staff, including editorial and translation staff, on an as needed basis. In contrast, the Registry of the Appeals Tribunal services the Tribunal with just two Professional and two General Service staff.

47. The Appeals Tribunal is a court of review, considering appeals from both staff and management. Additionally, pursuant to article 2.10 of the statute of the Appeals Tribunal, the Secretary-General has concluded agreements with five agencies that have access to the Tribunal as an administrative tribunal. The experience of the first year shows that both parties are actively availing themselves of the right of appeal. As of 1 July 2009, the Tribunal received 110 cases, 19 of which were inherited when the mandate of the United Nations Administrative Tribunal ended. The number of cases filed this year with the Appeals Tribunal is comparable to the workload of ILOAT, which considers approximately 110 cases annually and does not accumulate a backlog.

48. The current staffing of the Registry of the Appeals Tribunal cannot fully support the Tribunal and allow it to process the cases in a timely way. Given the staffing level of the Registry, there is a substantial likelihood that a new backlog of cases will accumulate at the appellate level. Delay was one of the negative attributes of the former system and allowing a new backlog at such an early stage in the new system's functioning would undermine an important part of the reform effort. Additionally, significant delay at the appellate level is undesirable because the final decisions rendered by the Appeals Tribunal may have a significant effect on reducing the number of cases filed in the future by settling important issues in jurisprudence.

49. Under article 4.2 of its statute, the Appeals Tribunal "shall hold ordinary sessions at dates to be fixed by its rules of procedure, subject to the determination of its President that there are sufficient numbers of cases to justify holding the session". Given the experience of the first year of operations, taking into account the number of cases filed with the Appeals Tribunal, it is envisioned that the Tribunal will have sufficient cases to justify meeting in three sessions annually. The Secretary-General notes, however, that the current travel budget for the Appeals Tribunal is insufficient to accommodate a third session.

D. Office of Staff Legal Assistance

1. Review of the Office of Staff Legal Assistance

50. The Office of Staff Legal Assistance has faced many challenges in its first year of operations. As a new body, the Office had to select staff both for its Headquarters and its four satellite offices in Addis Ababa, Beirut, Geneva and Nairobi. The staff then had to learn to work with the new Tribunals and adapt to the new substantially professionalized environment. Despite such challenges, there were many important accomplishments, including: (a) responding to the majority of the claims brought to the Office, including the provision of summary advice (206 instances), to clients in more than 80 countries; (b) closure or resolution of 54 per cent of the 938 cases filed with the Office of Staff Legal Assistance during the year; (c) a high success rate before the Dispute Tribunal; (d) undertaking outreach to staff in the field; and (e) the development of relationships with internal and external partners, including United Nations staff unions and associations, staff-at-large, the Office of the United Nations Ombudsman and Mediation Services, the legal offices of the Secretariat and United Nations agencies, funds and programmes, law offices providing pro bono legal counsel, schools and universities.

51. On 1 July 2009, 346 cases were transferred to the Office of Staff Legal Assistance from the former United Nations Panel of Counsel. During the first year, 592 new cases were filed with the Office, bringing the total number of cases handled by the Office during the year to 938. Of these cases, the Office has closed or has found solutions for 510 of them. As at 30 June 2010, the Office had 428 active cases. The trend during the year was an increase in interest by staff in seeking the assistance of the Office, whether for formal or informal resolution of grievances. As staff away from the three locations of the Tribunals becomes more familiar with the new system and its accomplishments, the Office anticipates an even greater number of requests for assistance, which will put a further strain on its limited resources.

52. Pursuant to General Assembly resolution 62/228, the Office provides professional legal assistance to staff, consisting of legal advice and representation to staff members contesting an administrative decision or appealing a disciplinary measure. Upon receipt of a request for assistance, counsel from the Office first assesses the merits of the case, both substantive and procedural. Should the counsel determine that the case has legal merit and will be receivable by the Tribunals, he or she provides legal advice to the staff member and may take, inter alia, any of the following actions on behalf of the staff: (a) draft legal submissions and other correspondence; (b) upon authorization from the staff member, engage in discussions with third parties or opposing counsel on case management issues or with a view to negotiating settlements; and (c) represent the staff member in

hearings before the Dispute Tribunal. The Office will decline to take a case when the office determines that pursuing the case is not in the interest of the staff member, in the interest of justice or within the scope of the Office's legal obligations to bring a case before a Tribunal.[2]

53. The amount of time required to deal with these matters varies, depending on the complexity of each case, the legal issues raised and the personal needs of the staff member. Some cases require a great deal of time and effort on the part of counsel. For example, a case before the Dispute Tribunal could involve several submissions, multiple hearings, discussions with opposing counsel and numerous consultations with the concerned staff member. Managing a staff member's expectations can be challenging and time consuming. Cases may be resolved informally after significant consultation with the staff member and discussions and negotiations with third parties, or referral to other actors in the system, including the Office of the United Nations Ombudsman and Mediation Services or concerned staff unions. In other cases, the Office may provide summary legal advice to a staff member.

54. On a number of occasions, sometimes after considerable time and effort on the part of the Office, a case may be voluntarily withdrawn by the staff member after the Office has explained the unlikelihood of success before a Tribunal or other recourse body.

55. The Office of Staff Legal Assistance currently represents the staff member in 72 per cent of the cases before the Dispute Tribunal in New York; in 54 per cent of the cases before the Dispute Tribunal in Geneva; and in more than 65 per cent of cases before the Dispute Tribunal in Nairobi.

56. During the first year of its operations, the largest category of cases handled by the Office, by subject matter, was disciplinary. The next largest category was non-renewal of contract, followed by non-promotion.

57. The majority of the Office's cases arise from contested decisions taken by peacekeeping missions (Department of Peacekeeping Operations/Department of Field Support) (231 cases). Decisions taken by the Department of Management of the Secretariat comprise the next largest category (92 cases), followed by the United Nations Development Programme (UNDP) (70 cases), the regional commissions (62 cases), the Department for General Assembly and Conference Management (50 cases) and the United Nations Children's Fund (UNICEF) (48 cases). A total of 197 cases are from four Secretariat entities, namely the Department of Management, the Department for General Assembly and Conference Management, the Department of Safety and Security and the Department of Public Information. This relatively large percentage of the overall number of cases filed may be explained by the fact that New York-based staff can more readily contact the Office of Staff Legal Assistance than can staff located away from Headquarters, particularly staff in field missions.

[2] In its judgement UNDT/2009/093, the Tribunal interpreted the obligations of the Office of Staff Legal Assistance, pursuant to resolution 62/228, to include the following: "the Office of Staff Legal Assistance is ... entitled to advise applicants not to file an application before the Tribunal and may therefore legally refuse to appoint counsel for an applicant on the grounds that his application has little chance of success". In its judgement UNDT/2010/025, the Tribunal further stated that not to do so "would overload the Office and prejudice those applicants with a serious case".

2. Issues relating to the first year of functioning of the Office of Staff Legal Assistance

58. The establishment of the Office of Staff Legal Assistance presented many challenges, which were particularly acute in setting up the satellite offices, each of which are staffed by a single legal officer working without support staff. In offices with no other presence of the Office of Administration of Justice (for example Addis Ababa and Beirut) the legal officer must manage the establishment, administration and caseload of the office without onsite assistance from the Office of Administration of Justice.

59. The services of part-time legal officers were engaged using funding allocated for the regular budget posts that had not yet been filled. In addition, approximately 15 volunteer counsel affiliated with the Office of Staff Legal Assistance assisted in managing the caseload over the course of the reporting period. Legal interns and external pro bono counsel have also assisted in its work. While this assistance is welcome, and has been extremely helpful and even strategic in terms of broadening the Office's support base, it does not fill the human resources gap which exists in the Office as a whole, particularly in duty stations other than New York.

60. The Office of Staff Legal Assistance has attempted to gain additional funding through the establishment of the Trust Fund for Staff Legal Assistance. The Fund, established in January 2010, was created to enhance the ability of the Office to provide legal advice and/or representation to United Nations staff members. Concerted efforts have been made to obtain contributions from staff unions, individual staff members, former clients and external parties. However, with the exception of a contribution of 50,000 Swiss francs by the Staff Coordinating Council of the United Nations Office at Geneva, the Office has received very modest and limited contributions to the Trust Fund.

61. In addition, while expectations of the justice system have increased over the past year as it has become more well known, the staffing of the Office has remained static owing to post and budgetary limitations. This is in contrast with offices providing legal counsel for the Administration, which are able to redeploy posts from other areas or to use their general temporary assistance budgets to enhance staffing in response to the surge in the use of the new system. There is an acute need, based on the existing and prospective workload, for the Office to be strengthened with additional staff, particularly in duty stations away from New York, including the field.

62. In light of the experience gained in the first year of operation of the new system, and the volume of cases currently being handled by the Office of Staff Legal Assistance, the Secretary-General believes that the present staffing of the Office is insufficient to handle the volume of cases, even after a significant triage and prioritization process has taken place. The Office also suffers from a lack of more experienced legal officers given the relatively low level assigned to the majority of legal officer posts (P-3). Finally, the absence of any General Service support in the field poses a major impediment to the effective and efficient processing of cases as well as sending an undesirable signal to field staff, that is that core operations are still really taking place in New York.

63. The Secretary-General notes that his prior proposal for the Office of Staff Legal Assistance included a request for three posts for regional coordinating counsel

at the P-4 level and several legal officer posts in major field missions (see A/62/294). In light of the experience gained in the first year of operation of the new system and the volume of cases currently being handled by the Office, the Secretary-General believes that the Office must be strengthened with additional Professional posts at a sufficiently senior level to serve as deputy in New York and as regional coordinators in Geneva and Nairobi.

64. The absence of any presence of the Office in the field missions is another area of significant concern since a large number of the cases handled by the Office are filed by staff serving in the field. The proposal of the Secretary-General (see A/62/294) was to place a legal officer, a national officer and administrative support in three large field missions (the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), the United Nations Mission in Liberia (UNMIL) and the United Nations Mission in the Sudan (UNMIS)). In light of the experience gained in the first year of operation, and considering the large volume of cases coming from the field, which is expected to increase as field staff become more aware of the new system, and owing to the fact that the presence of a legal officer from the office may facilitate informal resolution of matters at an earlier stage, the Secretary-General believes that the absence of such an officer in the field constitutes an area of concern in the new system, particularly as one of the core mandates from the General Assembly was that the system should be decentralized.

65. For the above reasons, the Secretary-General recommends that a Professional post for an officer from the Office of Staff Legal Assistance be established in Entebbe, Uganda. Entebbe is evolving into a regional service centre for the African field missions. Establishing a presence of the Office in Entebbe would be a cost-effective way to serve a number of field missions from a single location. In addition, it is recommended that administrative support be provided at each duty station served by the office away from Headquarters, including the proposed new duty station in Entebbe.

66. Because the Office of Staff Legal Assistance is a decentralized office, there are concerns relating to the daily operations of the small offices away from Headquarters. Legal officers in the smaller offices are alone, relying upon New York for administrative support. These legal officer posts, at the relatively junior P-3 level, require oversight and guidance from Headquarters. While much communication can be facilitated by e-mail, Office staff must periodically meet with the Chief and communicate with each other via video and teleconference. Legal officers not co-located with a Registry of the Dispute Tribunal (Addis Ababa and Beirut) must represent staff in proceedings via videoconference. Teleconference is not a viable option when all of the other parties are either physically present before the Dispute Tribunal or are appearing via videoconference. At present, the communications budget allocated to the Office is insufficient for the use of videoconference for any of these activities.

67. Legal officers working away from Headquarters must be able to correspond on vital matters with the head office outside normal office hours owing to the fact that there is at least a six-hour time difference between the satellite offices and Headquarters. While telecommunications solutions such as Blackberries would enable the decentralized offices to function efficiently, the level of resources of the Office of Staff Legal Assistance does not provide for such access.

68. Although most of the work of the Office of Staff Legal Assistance can be facilitated through the use of technologies such as e-mail and videoconferencing, there are times when it is necessary for staff to meet in person. Legal officers serving at offices away from New York serve a very wide geographic area, including numerous field missions. In order for staff to have meaningful access to the Office, particularly in the field, staff must periodically visit the duty stations they serve in order to meet with clients, have face-to-face negotiations with the local administration and facilitate informal dispute resolution. Legal officers in Addis Ababa and Beirut may also be required to attend hearings of the Dispute Tribunal on behalf of clients in person. At present, there is no travel budget for the Office to enable any of these functions.

69. Finally, at offices away from Headquarters, there is a significant funding shortfall for necessities, including the use of photocopiers and scanners, the purchase of paper and basic office supplies such as binders, paper clips and pens. The lack of basic resources, coupled with the fact that the legal officers work in total isolation, is a serious problem.

E. Office of the Executive Director

1. Review of the Office of the Executive Director

70. Since its inception, the principal task of the Office of the Executive Director has been to set up the Office of Administration of Justice, to coordinate the selection of staff for the Registries of the Dispute and Appeals Tribunals and the Office of Staff Legal Assistance, to provide assistance to the judges of the Tribunals in taking up their duties and to facilitate a smooth transition from the old system of justice to the new one.

71. In June 2009, the Office of the Executive Director prepared and carried out an induction course for the newly appointed judges of the Dispute and Appeals Tribunals. Subsequently, the Office published and distributed a handbook on the new system, entitled "A guide to resolving disputes", which has been distributed to staff throughout the system.

72. Additionally, the Office of the Executive Director has conducted a global outreach campaign to inform staff about the new system of justice. During the reporting period, the Executive Director and other senior staff of the Office of Administration of Justice have undertaken outreach missions and held town hall meetings at numerous duty stations, including Bangkok; Beirut; Geneva; Port-au-Prince; The Hague; Nairobi; Santiago; Vienna; Kuwait City; Amman; Brindisi, Italy; Santo Domingo; Kinshasa; Khartoum; Ndjamena; Goma, Democratic Republic of the Congo; and Entebbe. In addition, the Office of the Executive Director participated in the thirtieth and thirty-first sessions of the United Nations Staff-Management Coordination Committee in Nairobi, in June 2009, and in Beirut, in June 2010.

73. During the first year, the Office of the Executive Director filled all positions in the Registries of the Dispute Tribunal and the Appeals Tribunal and almost all positions in the Office of Staff Legal Assistance; facilitated and participated in the plenary meetings of the Dispute Tribunal in November and December 2009 in Geneva and in June and July 2010 in New York; assisted with logistical and

administrative arrangements for the preparation of the two sessions of the Appeals Tribunal held in March and April in Geneva and in June and July 2010 in New York; continued its efforts to ensure the construction of courtrooms and, where appropriate, permanent offices in New York, Geneva and Nairobi; liaised with the Department for General Assembly and Conference Management to secure the necessary translation and interpretation services for the Dispute Tribunal and the Appeals Tribunal; and established a voluntary trust fund to support the mandate of the Office of Staff Legal Assistance. The Office of the Executive Director also published several i-Seek articles, including one on the occasion of the 100th day of the existence of the new system and another to commemorate the completion of its first year of operation.

74. On 7 April 2010, a Secretary-General's bulletin was issued, promulgating the organization and terms of reference of the Office of Administration of Justice (ST/SGB/2010/3).

75. Following the mandate of the General Assembly to use technology to enhance accessibility to the new system, the Office launched a website, on 28 June 2010, which provides information about the internal justice system at the United Nations, including the Office of Staff Legal Assistance, the Dispute Tribunal and the Appeals Tribunal (http://www.un.org/en/oaj). All judgements rendered by the Tribunals can be downloaded from the website, which also has an improved search capability. In addition, the Office is developing a fully web-based electronic case management system, which is expected to be available later in 2010.

76. Another of the mandates of the Office of the Executive Director has been to negotiate and conclude agreements with a number of entities in the United Nations common system for their participation in the new system. To date, agreements have been concluded by the Secretary-General with the International Civil Aviation Organization (ICAO), the International Maritime Organization (IMO), UNRWA, the International Seabed Authority and the International Tribunal for the Law of the Sea.

77. The Office of the Executive Director is also responsible for providing support to the Internal Justice Council in its work. During the reporting period, the Council held regular meetings and conducted a number of monitoring missions to see how the new system is functioning and in order to prepare a report with its views on the system to be presented to the General Assembly at its sixty-fifth session. The Council also recently completed a draft code of conduct for the judges of the Dispute Tribunal and the Appeals Tribunal for transmission to the General Assembly for its consideration and adoption.

2. Issues relating to the first year of functioning of the Office of the Executive Director

78. The Office of the Executive Director is a small office with a large mandate. The Office of Administration of Justice is the focal point for organizing all of the technical, budgetary and logistical aspects of each of its substantive offices. Currently, operational and budgetary support has been provided to the Office of Administration of Justice by the Executive Office of the Secretary-General. Despite the fact that the Executive Office now supports the Office of Administration of Justice and the greatly expanded and decentralized Ombudsman's Office, representing a very substantial increase in its operational mandate, additional posts

have not been allocated to support this growth in its workload. Furthermore, the limited number of Professional staff of the Office of the Executive Director are, for the most part, legal experts, with limited experience in key administrative areas. The Office of the Executive Director would benefit from strengthened administrative support at both the Professional and the General Service levels.

79. The Secretary-General also believes, in light of the experience gained in this first year, that the role and functions of the Executive Director in the new system are substantial. As is the case with the Ombudsman, who heads the informal system, the Executive Director plays an essential role in maintaining the independence of the formal system. On an operational level, the Executive Director is responsible for the coordination of the independent elements of the formal system, including oversight and coordination of the Registries and the Office of Staff Legal Assistance. The Executive Director represents the formal system both within the United Nations and to external bodies.

80. In light of the importance of the role of the Executive Director and the considerable duties performed by this individual, the General Assembly may wish to reconsider the proposals regarding the classification of the Executive Director and the Special Assistant made by the Secretary-General in his report on the administration of justice submitted to the Assembly at its sixty-second session (A/62/294).

81. Another issue that has arisen in regard to the functioning of the Office of the Executive Director is the need for the Executive Director and members of his staff to travel to participate in meetings. The Executive Director is frequently required to participate in meetings, both within the Office of Administration of Justice (for example, the plenary sessions of the Dispute Tribunal and the Appeals Tribunal) and in the wider organizational context. Currently, the travel budget of the Office of Administration of Justice, which must accommodate travel of the Executive Director and his staff, must also be used for travel relating to the sessions of the Appeals Tribunal, the Dispute Tribunal, travel of participants in the hearings of the Dispute Tribunal, when required by the Tribunal, and all other travel by staff. The funds currently allocated are insufficient for all of these requirements.

F. Legal offices representing the Secretary-General as respondent

82. Several offices represent the Secretary-General as the respondent in cases brought by staff members. The experiences of these offices in the first year of the new system are set out below.

1. Legal offices representing the Secretary-General before the Dispute Tribunal

Administrative Law Section

83. The Administrative Law Section, located in the Human Resources Policy Service, Office of Human Resources Management, is responsible for representing the Secretary-General in his role as respondent before the Dispute Tribunal in respect of cases filed by staff serving across the global Secretariat (except cases brought by staff of the United Nations Offices at Geneva, Nairobi and Vienna, UNEP and the United Nations Human Settlements Programme (UN-Habitat)), as well as cases from staff of the International Criminal Tribunal for Rwanda and the

International Tribunal for the Former Yugoslavia. The Administrative Law Section also handles disciplinary matters referred to the Office of Human Resources Management relating to all Secretariat staff and staff of the two International Tribunals and provides advice to managers on the administration of justice system in general, and on aspects of individual appeals and disciplinary cases.

84. Upon receipt of an application from the Dispute Tribunal, the Administrative Law Section makes a determination as to whether to recommend pursuing informal resolution or to litigate. As the time-limit for submitting the respondent's reply to an application was reduced from two months under the former system to 30 days under the new system, the decision on whether to recommend settlement or to litigate must be taken quickly in order to leave enough time to prepare a reply to the application if the case is to be litigated. If the Administrative Law Section recommends informal resolution, the Section is responsible for obtaining the necessary approvals, negotiating the resolution with the applicant and/or his or her counsel, preparing the settlement agreement and for following up on its implementation.

85. If the case proceeds to litigation, the legal officers of the Section attend directions hearings and hearings on the merits, including hearings on compensation, and make further written submissions as ordered by the Dispute Tribunal. Attendance at hearings requires substantial preparation time, including: further consultation with the office/department concerned and with the Office of Legal Affairs, where appropriate; meeting with witnesses to be called by the respondent; and preparing for the cross-examination of witnesses called by the applicant or his/her counsel and/or by the Tribunal. When a final judgement is issued, the Section liaises with the Office of Legal Affairs, which determines whether to appeal the Dispute Tribunal judgement to the Appeals Tribunal. The Section is also responsible for conveying the final judgements of the Dispute Tribunal to the relevant officials for implementation.

86. The Section also represents the respondent before the Dispute Tribunal in hearings on suspension of action, which are held within five days of receipt of the request. These hearings require substantial preparation time, and are particularly difficult to prepare for when the office concerned and potential witnesses are located away from Headquarters and time differences are at issue.

87. The Section is responsible for handling disciplinary matters referred to the Office of Human Resources Management for action. The procedures for handling disciplinary cases in the new system of justice and the role of the Section and the Office of Human Resources Management are set out in a separate report from the Secretary-General on his practice in disciplinary matters (see A/65/180). Between 1 July 2009 and 30 June 2010, the Section was responsible for handling 377 disciplinary matters.

88. The transition to the new system has posed a number of challenges for the Section, the first of which was the substantial increase in the volume of work given the resources available. As of 30 June 2010, the Section comprised an Appeals Unit with 1 P-5 (redeployed as of 1 January 2010) and two P-4s; and a Disciplinary Unit with one P-5, one P-4, two P-3s and one P-2 (the Disciplinary Unit also handles appeals arising out of disciplinary cases). Of these posts, three are financed from the regular budget (one of which was redeployed from within the Human Resources Policy Service) and all others are financed from the support account.

89. During the year prior to the introduction of the new system, the Section was responsible for handling approximately 150 appeal cases. As of 30 June 2010, the Section was responsible for 232 appeals, including cases transferred from the Joint Appeals Boards, the Joint Disciplinary Committees and the Administrative Tribunal. The Section has also engaged in efforts to informally resolve approximately seven cases, either prior to or during the consideration of a case by the Dispute Tribunal.

90. In addition to the increase in the number of cases, the shift from document-based proceedings under the former system to numerous hearings and written submissions under the new system has also substantially increased the workload of the Section. On average, the number of working days required to process an appeal has increased from five days under the former system to 15 days under the new one. Under the former system, the respondent made, on average, two written submissions in each case, and, from time to time, responded to queries from the Joint Appeals Board. Hearings in appeals cases were rarely held, if at all. Under the new system, the Tribunal often requires numerous written submissions in each case and, in a significant number of the cases handled by the Section since 1 July 2009, between three to four oral hearings were held, in some cases even more. Preparation time for hearings can be substantial, requiring consultation with the office/department concerned and, for merits hearings, preparation requires locating and speaking with witnesses (across time zones) in order to familiarize them with the process and to obtain statements.

91. As noted above, between 1 July 2009 and 30 June 2010, the Appeals Unit of the Section was responsible for handling 232 cases; and the legal officers of the Section have attended approximately 190 hearings. The new working methods, the high number of appeals to be addressed, the shortened deadlines for submission of the respondent's replies (from two months to 30 days) and the time differences between New York and the other duty stations where client departments/offices, witnesses and the Tribunal branches are located, have resulted in a heavy workload for the staff of the Section, who consistently work very long hours and during the weekends.

92. Effective 1 July 2010, two additional support account posts (1 P-4 and 1 P-3) were approved to handle appeals relating to peacekeeping staff; the incumbents will be located in Nairobi. In addition, the Secretary-General has provided temporary resources of one P-4 and two P-3 posts under his limited budgetary discretion in order to address the backlog of cases referred from the Administrative Tribunal.

93. Additional resources will be required, however, given the heavy workload of the Section, including the work related to disciplinary matters (as noted above, the Section handled 377 disciplinary matters during the reporting period), in order to avoid the development of a backlog and in order for the Section to effectively discharge its responsibilities in a timely fashion. In this regard, it is noted that while a substantial number of appeals (approximately 60 per cent) and disciplinary matters (approximately 30 per cent) handled by the Section arise in non-peacekeeping offices, the Section only has three posts funded from the regular budget, one of which was deployed from another Section in the Human Resources Policy Service. Accordingly, the Secretary-General requests that the above-mentioned resources issued under his limited budgetary discretion authority (1 P-4 and 2 P-3) be converted to established posts.

United Nations Development Programme

94. In connection with the administration of justice, the UNDP Legal Support Office, as the integrated legal office for UNDP and its affiliated funds, is engaged at all stages of informal and formal resolution of staff grievances. At the informal stage, the Office provides advice to managers, including the Office of Human Resources, country offices and regional bureaux, on the resolution of differences that could lead to formal appeals if not resolved. The intervention of the Office of the Ombudsman and Mediation Services may be sought at this stage. This preventive work of the Office, which has increased since the launch of the new system as managers seek guidance to ensure that the decisions they are taking are in accordance with the legal framework, takes up significantly more time and resources. Where issues are not resolved at the informal stage, the Office makes recommendations to the Assistant Administrator and the Director of the Bureau of Management on the disposition of requests for management evaluation; represents UNDP before the Dispute Tribunal; participates in mediation proceedings; and coordinates with the Office of Legal Affairs in its representation of UNDP before the Appeals Tribunal. The Office also recommends action from an accountability perspective, where warranted.

95. During the course of the first year of the new system, the Office has engaged in training and given briefings to raise awareness among staff and managers of the features of the new system. In addition, the Office has had to adjust to the shorter statutory deadlines for responses to requests for management evaluation at the Dispute Tribunal, as well as the increased number of oral hearings and multiple requests for written submissions to the Dispute Tribunal for each individual case. This has resulted in an overall increase in the workload of the staff handling administrative law matters in the Office, despite the hiring of an additional legal specialist (P-4) to assist with the demands of the new system. Moreover, in view of the increased focus on oral hearings and full trials at the Dispute Tribunal, this has required focused training for staff in the area of advocacy and litigation.

United Nations Children's Fund

96. The Office of the Principal Adviser to the Executive Director, within the Office of the Executive Director, has overall responsibility for legal support and advice within UNICEF. The Policy and Administrative Law Section of the Division of Human Resources has the day-to-day responsibility for handling disciplinary cases and requests for management evaluations as well as for representing UNICEF before the Dispute Tribunal, as was the case under the old system. The introduction of the new system has resulted in an increased workload, which UNICEF has addressed through adjustments to its staffing levels, competencies and standard operating procedures. Consistent with the goal of the new system to promote informal resolution and to solve cases in a more expeditious and fair manner, special attention is paid to management evaluation requests and to mediation opportunities.

Office of the United Nations High Commissioner for Refugees

97. Prior to the reform of the administration of justice system, the administrative review of decisions concerning the staff of the Office of the United Nations High Commissioner for Refugees (UNHCR) was carried out by the Administrative Law Unit at the United Nations Secretariat. Since 1 July 2009, UNHCR has been

conducting its own management evaluation, which is delegated to the Deputy High Commissioner. The Legal Affairs Service, reporting directly to the Deputy High Commissioner, advises the Deputy High Commissioner on all management evaluations.

98. UNHCR has had a very positive experience with the management evaluation as it has enabled management to critically review its decisions, take remedial action before cases escalate to the level of the Dispute Tribunal and review and improve its procedures. In many cases the management evaluation process has also re-established dialogue between the organization and the staff member.

99. At the Dispute Tribunal, UNHCR is represented by the Director of the Division of Human Resources Management. The Legal Affairs Service advises the Director of the Division on all pending cases.

100. At UNHCR, a great deal of emphasis has always been placed on seeking informal resolution to grievances at an early stage, and a number of cases could be resolved informally through the involvement of the UNHCR ombudsman. Nevertheless, since the introduction of the new system, there has been a noticeable increase in the number of grievances that staff members seek to address through the formal system.

101. In order to support the work of the Office of Staff Legal Assistance, UNHCR has provided the Office of Staff Legal Assistance office in Geneva with a Legal Officer on a non-reimbursable loan. UNHCR intends to provide an additional Legal Officer to the Office in the third quarter of 2010.

United Nations Office for Project Services

102. United Nations Office for Project Services (UNOPS), being a relatively small United Nations organization, has not received many cases under chapter XI of the United Nations Staff Regulations and Rules. Although it has not established a legal unit that works solely on such cases, it has a legal officer at its headquarters who is responsible, inter alia, for monitoring developments in the justice system (including the jurisprudence and practices of the Dispute and Appeals Tribunals). Each case filed with the Dispute Tribunal (as well as any issue that may lead to a case, including requests for management evaluations) is managed by the UNOPS legal officer in whose regional office the case or issue arose, supported by the above-mentioned legal officer at headquarters. This work is conducted under the overall supervision of the UNOPS General Counsel. In line with the Secretary-General's bulletin (ST/SGB/2008/13), appeals to the Appeals Tribunal are managed by the Office of Legal Affairs.

103. Thus far, the new system seems to be much more formal and professional than the previous system. In the new system, cases are conducted in a manner similar to many national courts, the increased number of oral hearings being just one example of this.

104. The amount of time required of both lawyers and non-lawyers who are involved in the case has, accordingly, increased significantly. Furthermore, staff may make requests for the production of a large number of documents. In general, the Dispute Tribunal has been inclined to grant these requests, the fulfilment of which involves a great deal of work on the part of the Organization.

United Nations Office at Geneva

105. At the United Nations Office at Geneva, the Human Resources Management Service acts as the representative of the Organization before the Dispute Tribunal in cases filed by staff members or former staff members at the Office and its client organizations. The Legal Unit of the Human Resources Management Service acts as counsel for the respondent for the Office (Division of Administration, Division of Conference Management Services) as well as for its main clients as provided for in respective memorandums of understanding (the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Conference on Trade and Development (UNCTAD), the Office for the Coordination of Humanitarian Affairs, the Economic Commission for Europe and other smaller entities). The Legal Unit is composed of a Legal Officer and a Legal Assistant. A part-time temporary Associate Legal Officer is also currently working in the Unit.

106. With respect to organization and cooperation, there has been a positive relationship between the Legal Unit and the Dispute Tribunal in Geneva, including its Registry. In January 2010, a meeting took place between the judges of the Geneva Dispute Tribunal and the main stakeholders involved in formal and informal conflict resolution (representatives of the Human Resources Services and the Divisions of Administration of the United Nations Office at Geneva, UNCTAD, OHCHR, UNHCR and the International Trade Centre). The representative of the Office of Staff Legal Assistance and members of the Geneva Staff Council were also present. The main purpose of the meeting was to give the stakeholders an opportunity to exchange their views on the functioning of the new system in Geneva.

107. There are still a number of practical issues that require improvement in order for the system to function at its best, including: access to summaries of the judgements in order to be informed about emerging jurisprudence; resolving issues relating to interpretation during oral hearings when both French and English are being used by the parties, and improving access to videoconferencing so that hearings can be conducted by videoconference rather than teleconference.

108. One result of the establishment of the professionalized system is a significant increase in the workload of the legal officers in the Legal Unit. Staff members' submissions are much more detailed and require more analytical work and legal research, and there are more oral hearings than in the prior system, which are also time-consuming. In addition, the judges of the Dispute Tribunal often request the respondent to provide detailed information on elements of a case, thus creating additional work and more consultation with offices/managers involved. The overall result is that each case requires more staff time than a case would have taken in the old system.

109. Furthermore, the fact that judgements are rendered by the Dispute Tribunal quickly and in greater numbers than was the case in the old system means that the legal officers must devote more time to keeping abreast of the emerging jurisprudence. Finally, the Legal Unit must also provide support/input to the Office of Legal Affairs, which handles appeals for the Organization before the Appeals Tribunal.

110. Despite the significant increase in work, no additional resources were allocated to Geneva in conjunction with the transition to the new system. For that

reason, the Human Resources Management Service redeployed one Human Resources Officer (P-4) post to cover legal functions, thus leaving a gap in human resources. This redeployment of a single post is insufficient, in light of the increased workload, to respond adequately to the demands of the professionalized system.

United Nations Office at Vienna

111. At the United Nations Office at Vienna and at the United Nations Office on Drugs and Crime (UNODC), overall responsibility for acting as representative of the Secretary-General in appeal and disciplinary matters has been delegated to the Director of the Division for Management. Day-to-day responsibility for handling disciplinary cases and requests for management evaluations, as well as for representing the Organization before the Dispute Tribunal, is assigned to the Human Resources Management Service and coordinated by the Policy Officer within the Service.

112. The United Nations Office at Vienna/UNODC has noticed a significant increase in requests for legal advice and for confirmation of compliance with the relevant applicable law from managers who are becoming more and more aware of their accountability for the decisions taken in the discharge of their functions. In order to sensitize staff and management to the features of the new administration of justice system, the United Nations Office at Vienna/UNODC has organized ad hoc briefings during training opportunities, a lunch-time forum and town hall meetings, and has issued several electronic messages to staff at large based in Vienna and the field during the first year of operation of the new system.

113. Thus far, experiences with the Management Evaluation Unit and the Dispute Tribunal have been positive in respect to cooperation and organization, both in Geneva (where most of the appeals filed by staff are being considered) and in New York. The caseload at the United Nations Office at Vienna/UNODC (by virtue of being a small duty station) has always been more limited in comparison to other duty stations.

114. The United Nations Office at Vienna/UNODC has noticed, however, an increase in the number of appeals filed since the introduction of the new administration of justice system. This increase, coupled with the active cases from the former system that were transferred to the Dispute Tribunal, as well as the very short deadlines in the new system, is having a serious impact on the limited resources of the United Nations Office at Vienna/UNODC.

United Nations Office at Nairobi

115. The Division of Conference Services at the United Nations Office at Nairobi supported the Dispute Tribunal by providing logistical support for hearings and other Tribunal-related activities. The Facilities Management and Transportation Service supplied the Tribunal with office facilities.

116. As far as substantive legal matters were concerned, it was most unfortunate that the position of Senior Legal Officer fell vacant immediately after the first cases from the Office came before the Dispute Tribunal. This meant that, for most of the reporting period, the Office was represented before the Tribunal by a Human Resources Officer with legal background, assisted by colleagues from the Administrative Law Section. The Human Resources Officer performed these

functions in addition to the existing Human Resources workload. Legal officers from the Administrative Law Section who were assigned to Nairobi on mission provided advice and representation in several cases.

117. Other cases concerning the client offices of the United Nations Office at Nairobi were handled either by staff in UNEP or UN-HABITAT who have legal background (at UNEP for example by environmental lawyers of the Division of Environmental Law and Conventions and at UN-HABITAT by the newly arrived Chief of the Legal Unit) or by the above-mentioned staff member from the Office. These were mainly cases that had been referred from the defunct Joint Appeals Board to the various benches of the Dispute Tribunal. The United Nations Office at Nairobi and UNEP also engaged outside legal expertise on a consultant contract to assist with litigation matters before the Dispute Tribunal in 2010.

2. The legal office representing the Secretary-General before the Appeals Tribunal

Office of Legal Affairs

118. As the central legal service of the Organization, the Office of Legal Affairs provides legal advice to the Secretary-General, Secretariat departments and offices and United Nations organs in a number of areas, including, notably, the new system of administration of justice. Within the Office of Legal Affairs, the organizational unit entrusted with this responsibility is the Administration and Management Cluster in the General Legal Division. The functional responsibilities of the Division in this area pertain to both the informal and formal stages of dispute resolution and, broadly described, encompass the components set out below.

119. The General Legal Division provides advice to offices and departments of the Secretariat, as well as the Funds and Programmes and the two Tribunals, concerning the interpretation or implementation of the Staff Regulations and Rules or other personnel policies and practices and their impact on individual cases. Such advice may pertain to the very early stages of a claim advanced by a staff member and well before such a claim has progressed to litigation. Although the majority of such requests originate from the Department of Management (including organizational entities such as the Office of Human Resources Management, the Advisory Board on Compensation Claims, the Medical Services Division or the Insurance Section), a significant number of requests also come to the Division from the funds and programmes, UNHCR, and offices away from Headquarters.

120. Once a claim has advanced to the formal stage and a staff member has filed an application with the Dispute Tribunal, the Division regularly provides advice to the entity representing the Organization. Such entities include the Administrative Law Section and its counterparts in Geneva, Vienna and Nairobi and the funds and programmes (UNDP, UNICEF, the United Nations Population Fund (UNFPA), UNHCR and UNOPS). Such advice is necessary in order to ensure coordination and consistency in the legal strategies and arguments advanced by the Organization on issues of policy and principle. In that context, the Division brings judgements of the Dispute Tribunal that have significant implications for the Organization to the attention of all the relevant offices.

121. The Division also represents the Secretary-General before the Appeals Tribunal. This responsibility encompasses both the filing of appeals against judgements of the Dispute Tribunal and responding to appeals filed by staff

members. The Division performs this function with respect to all offices and departments of the Secretariat, as well as the funds and programmes. In order to determine whether appealing a given judgement is in the interest of the Organization, the Division must review and analyse all judgements of the Dispute Tribunal and consult with the entities representing the Secretary-General before the Tribunal. The process of handling an appeal requires research and analysis of all necessary factual and legal issues raised by the Tribunal and the preparation of a written appeal or answer, as appropriate.

122. In addition to providing advice on individual cases, the Division is also responsible for reviewing, providing advice on and legally clearing every administrative issuance relating to human resources management policy prior to its promulgation. Notably, the recent reforms in many areas of human resources (contractual reform, revisions to the staff regulations and rules and revisions to numerous other administrative issuances) have contributed to the significant increase in the work of the Division in this area at the same time as the launching of the new system.

123. The responsibilities of the Division in connection with the new system have greatly exceeded expectations. When the Secretary-General submitted his report on the resource requirements for the new administration of justice system before it became operational, the Advisory Committee on Administrative and Budgetary Questions declined to approve any of the posts that were requested for the Office of Legal Affairs on the assumption that "the efforts for early resolution of disputes through informal means may result in fewer cases being brought to the Tribunals" (see A/62/7/Add.7, para. 50). In light of that consideration, the Advisory Committee found that there was insufficient information to support the requested additional staff at that time, recommending against approval of these posts "until the real needs can be assessed" (ibid.). The Committee assumed that the substantial majority of cases would be resolved before they reached the Dispute Tribunal. Contrary to those assumptions, as discussed below, the "real needs" of the new administration of justice system have required the provision of the legal advice of the Division to a broader range of clients, on increasingly complex issues, which entail significant financial, legal and operational implications for the Organization, and on an even more urgent basis.

124. Moreover, at this time, there has been no reduction in the number of cases going to the highest level of the formal system. The statistics for the Dispute Tribunal and the Appeals Tribunal demonstrate that, despite the limited grounds of appeal, approximately 40 per cent of the judgements of the Dispute Tribunal have been appealed.

125. To date, more than 100 appeals and answers have been prepared and filed, reflecting a substantial increase in the workload of the Division. Under the former system, the bulk of the Division's work with respect to handling cases before the United Nations Administrative Tribunal consisted of preparing and filing answers to applications filed by staff members. During the period from 2001 to 2008, for example, the Division filed an average of 60 answers per year with the Administrative Tribunal.

126. Furthermore, the demand for the Division's representational services has been rapidly increasing. During the first six months of the new system, only 14 appeals were filed because many of the decisions of the Dispute Tribunal during that period

related to procedural issues rather than the merits of the cases. However, during the second six months, with the issuance of more judgements on the merits, 87 appeals were filed. If this trend continues, and all indications are that it will, the amount of direct representational services provided by the Division in the new system will be more than three times greater than in the former system.

127. The impact of the new system on the Division is not solely related to the number of appeals filed with the Appeals Tribunal; the nature of the work undertaken by the Division in this area has also substantially changed. Under the previous system, the Division had a generous time frame (a six-month deadline) to draft responses to the Administrative Tribunal. Generally, these responses were based upon the well-established jurisprudence of that Tribunal, and the Division's work was thus simpler and more manageable. However, under the new administration of justice system, the deadlines for filing and responding to appeals have been shortened to 45 days. Moreover, notwithstanding the 45-day deadline established in the statute of the Appeals Tribunal, the Tribunal shortened the deadline for filing an appeal to 15 days in the case of several interlocutory appeals and imposed a 48-hour deadline for the Secretary-General to respond to a motion for interim measures in which a staff member requested the Appeals Tribunal to order the payment of $80,000. In addition, the judgements of the Dispute Tribunal have raised new issues that cannot necessarily be addressed by drawing on the jurisprudence of the Administrative Tribunal. The Division is also frequently called upon to provide advice on an urgent basis to the entities representing the Organization before the Dispute Tribunal in advance of its regular hearings.

128. All of these factors are compounded by the fact that reform initiatives have also resulted in greater demands on the Division with respect to reviewing and providing legal clearance for administrative issuances and providing advice on the interpretation and implementation of the Staff Regulations and Rules.

129. At present, the Division has only three Professional posts funded under the regular budget for administration of justice and management issues, namely, legal officers at the P-5, P-4 and P-3 levels, and one General Service post. As of 1 July 2010, the Secretary-General has provided, under his limited budgetary discretion, temporary resources in the form of six P-3/P-4 and two General Service (Other level) posts for a limited duration. However, due to the lack of continuity of the funding, the Division has encountered significant obstacles in attracting qualified candidates who were willing to accept appointments of such a short duration.

130. Ultimately, the strains placed on the Division as a result of the unforeseen extent of the demand for its services will undermine its overall ability to provide legal advice on a timely basis and in a comprehensive manner, not simply in the area of administration of justice, but also regarding other administration and management matters. The provision of carefully considered legal advice at the stage of formulating and implementing policy and reviewing recommendations for the dismissal of staff members is essential to avoid problematic administrative decisions that give rise to staff grievances. Ensuring that the Division has the capacity to provide legal advice in the area of administration and management will avoid adverse long-term financial, legal and operational implications for the Organization as a whole.

131. In order to meet the substantially increased demand for legal services in the new system, the Secretary-General recommends that the General Assembly approve

new resources, consisting of three P-4, three P-3 and two General Service (Other level) posts, in order to bring a more stable staffing to the General Legal Division for the positions currently funded under the authority granted to the Secretary-General under the limited budgetary discretion.

III. Responses to questions relating to administration of justice

A. Overview

132. The following section responds to the queries set out by the General Assembly in its resolutions 63/253 and 64/233.

B. Responses

1. Proposals for delegation of authority for disciplinary measures

133. At its sixty-third session, the General Assembly, in paragraph 33 of its resolution 63/253 on the administration of justice at the United Nations, recalled paragraph 49 of its resolution 62/228, and requested the Secretary-General to submit to the Assembly at its sixty-fifth session a new detailed proposal, including a variety of options for delegation of authority for disciplinary measures, with full costing and a cost-benefit analysis, taking into account the recommendations contained in the report of the Advisory Committee on Administrative and Budgetary Questions on administration of justice (A/63/545). This submission responds to that request.

Background

134. At its sixty-second session, the General Assembly, in paragraph 49 of its resolution 62/228 endorsed, in principle, the delegation of authority for disciplinary measures to heads of offices away from Headquarters and heads of missions/Special Representatives of the Secretary-General. The Assembly requested the Secretary-General to present a report containing a detailed proposal regarding possible options for delegation of authority for disciplinary measures, including an assessment of possible implications for due process rights of staff members.

135. As requested, in his subsequent report on the subject (A/63/314), the Secretary-General reviewed the possible impact on the organizational structures of a full delegation of authority for disciplinary matters. The Secretary-General acknowledged that full delegation of authority may address some of the present delays associated with the centralized referral of misconduct cases to Headquarters but also recognized that a robust justice system was first needed to ensure the consistent application of disciplinary measures. There was concern that inconsistency in this area would affect the due process rights of staff and possibly raise the number of contested decisions that would subsequently require management evaluation and litigation in the formal system.

136. On the basis of the above considerations, in the same report the Secretary-General proposed a limited delegation of authority to the General Assembly at the sixty-third session. The proposal for limited delegation of authority envisaged that heads of missions and offices away from Headquarters would have the authority to impose minor sanctions in the form of censures and/or fines once the necessary

capacity was in place. This proposal reflected recommendations made by the Staff-Management Coordination Committee at its twenty-eighth session, held in Cyprus in 2007, and initially proposed by the Secretary-General in his report to the General Assembly at its sixty-second session (A/62/294, para. 116).

137. While the proposed limited delegation of authority for disciplinary matters was acknowledged to be part of the overall reform of the Organization's system of administration of justice, additional prerequisites and safeguards were also seen as necessary prior to the implementation of any delegated authority. The following needed elements were identified by the Secretary-General (see A/63/314, paras. 21-25):

(a) Access to the Office of the Ombudsman at Headquarters or at the regional level;

(b) Access to a fully operational Office of Staff Legal Assistance in the field;

(c) The outposting of legal officers from the Department of Management to assist and advise heads of missions on the exercise of delegated authority for disciplinary matters;

(d) The completion of a comprehensive training programme on the new justice system for all staff involved at all the different stages of the disciplinary process;

(e) The completion by the Office of Internal Oversight Services of a comprehensive investigation learning programme to support programme managers in dealing with the investigation process for handling category II cases;

(f) The completion of the comprehensive review of the recommendations for disciplinary action made by heads of missions to Headquarters under the previous disciplinary system. This review was to form the basis for developing guidelines for the imposition of censures and/or fines;

(g) The promulgation of a new revised administrative instruction relating to the full disciplinary process, including the pre-disciplinary stages (i.e. the reporting of misconduct, investigations, due process rights of staff, evaluation of investigation reports and disciplinary proceedings).

138. In its consideration of the Secretary-General's report, the Advisory Committee on Administrative and Budgetary Questions took note of the prerequisites cited by the Secretary-General, and found that the proposal of the Secretary-General was incomplete in several aspects (A/63/545, para. 17). The Advisory Committee also identified several factors that would need to be taken into account (A/63/545, paras. 16-19), including the requirement of an assessment of possible implications for the due process rights of staff members. The Committee also raised the issue of cost-effectiveness, questioning whether the resources envisaged to support limited delegation of authority for disciplinary matters might be compatible with those needed to support full delegation of authority, and noted that the possibility of maintaining a fully centralized approach with increased capacity at Headquarters should also be taken into account.

Current status

139. Since the introduction of the Secretary-General's proposal for limited delegation of authority for disciplinary measures was introduced (A/63/314), the

new system of administration of justice has become operational. Against this backdrop, the Secretary-General has reviewed the feasibility of its earlier proposal and has concluded that a number of the safeguards and prerequisites previously identified have not yet been put in place or met. As a result, the Secretary-General is of the view that he is not yet in a position to respond fully to the request of the General Assembly.

140. The subparagraphs below provide an overview of the status of implementation of the prerequisites raised in the above-mentioned report of the Secretary-General to the General Assembly at its sixty-third session and the elements of concern to the Advisory Committee (see A/63/545):

(a) Access to ombudsman and mediation services is available to United Nations employees at Headquarters and, through regional offices, to staff in Vienna, Kinshasa, Khartoum, Nairobi and Santiago. Only those offices in Kinshasa and Khartoum are based in peacekeeping operations. The Ombudsman's office in Kinshasa covers the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), the United Nations Operation in Côte d'Ivoire (ONUCI), UNMIL, the United Nations Integrated Office in Burundi (BINUB) and the office in Khartoum covers UNMIS, the African Union-United Nations Hybrid Operation in Darfur (UNAMID) and the United Nations Mission in the Central African Republic and Chad (MINURCAT). The other peacekeeping missions, as well as special political missions, must rely on the Ombudsman's office at Headquarters and the regional offices in Nairobi, Vienna and Santiago;

(b) The Office of Staff Legal Assistance has no presence within field missions and has one legal officer at each of the following offices: Addis Ababa, Beirut, Geneva and Nairobi;

(c) The Office of Internal Oversight Services has established an Investigation Learning Programme that encompasses developmental needs for its Investigations Division and other staff members who may be involved in the investigative function. The Investigations Division has used its expertise to design, develop and implement the Investigation Learning Programme and has absorbed the associated cost. The Programme currently has seven modules, which are in varying stages of design, piloting or full implementation:

(i) Programme manager awareness: this one-day training module is designed for staff with managerial responsibilities impacted by investigations. Various versions have been presented, and a redesign is currently under way;

(ii) Investigation practice: this five-day training module is designed for investigators and those who may undertake investigative tasks or be in a position of first response to possible misconduct. This module is currently under development;

(iii) Investigating procurement matters: this two or three-day module is designed for investigators who may have responsibilities for handling procurement matters, as well as for staff with oversight responsibilities in procurement matters. It has been completed and tested on focus groups;

(iv) Investigating sexual harassment: this module satisfies the requirements set out in the Secretary-General's bulletin on the prohibition of discrimination, harassment, including sexual harassment, and abuse of authority of

11 February 2008 (ST/SGB/2008/5). The module provides staff with skills necessary to investigate sexual harassment complaints. Approximately 200 staff members have followed this two-day training module;

(v) Investigating sexual exploitation and abuse: this module is designed for investigators and others who may undertake investigative tasks or be first responders to possible sexual exploitation and abuse. A three-day pilot training has been presented twice, with redesign under way;

(vi) Advance interviewing technique: this module is intended for investigators and develops interviewing skills. It is a two- or three-day module and has undergone an initial test presentation once, with design under way;

(vii) Information technology forensics: this two-day training module is for investigators and others who might support investigators in collecting electronic evidence. A pilot was presented once and redesign is under way;

(d) As noted in the report of the Secretary-General of August 2007 (A/62/294, para. 120), a comprehensive monitoring exercise was to be undertaken prior to the implementation of the new justice system. This was completed for the years 2006, 2007 and 2008. Guidelines are being developed for recommendations of disciplinary measures in respect of sanctions of fine and/or censure;

(e) On 11 May 2010, an amendment to the existing administrative instruction relating to the disciplinary process was issued (see ST/AI/371/Amend.1). The amendment is a transitional measure that reflects procedural changes to the disciplinary process in light of the changes to the administration of justice system. It is not, however, a comprehensive revision addressing the reporting of misconduct, investigations, due process rights of staff, evaluation of investigation reports and disciplinary proceedings. The comprehensive revision of the administrative instruction is in progress.

141. The spectrum of the United Nations internal justice system as a whole has considerably changed with the introduction of the new system of administration of justice, the implementation of which is itself still in its initial phase. In particular, disciplinary cases are now being considered in the first instance by professional judges. The jurisprudence of the Dispute Tribunal and the Appeals Tribunal has only recently begun to emerge and it can be observed that the Tribunals are interpreting the United Nations Staff Rules and Regulations, at times in novel ways. In this process, the Tribunals are providing guidance on the procedural and substantive standards required in the pre-disciplinary phase and the disciplinary phase, as well as on the due process rights of staff members.

142. The Secretary-General acknowledges that heads of missions have raised legitimate concerns with the former and current system and its impact on timely action in disciplinary matters. In this respect, the Secretariat is mindful of the request by heads of missions to be given delegated authority in disciplinary matters, predicated in some measure on the perception that the failure to act promptly, in particular regarding egregious acts of misconduct, sets a tone of impunity and affects the morale within the missions. The Secretariat posits, however, that it would not be prudent to introduce a new system of delegated authority at a time when the administration of justice and emerging jurisprudence is evolving and informing the Organization's response in this area, and when insufficient progress has been

achieved in addressing the above-cited prerequisites and safeguards for further delegation of authority.

Conclusion and recommendations

143. In conclusion, the prerequisites and safeguards articulated herein remain necessary and have not yet been fulfilled to a significant degree. In addition, the new system of administration of justice continues to evolve, in particular, the emerging jurisprudence of the Tribunals.

144. On this basis, the Secretary-General proposes to put the previous recommendation for limited delegation of authority on hold, pending further developments and analysis. Once the critical elements are in place and a full analysis done of the implications on all options for managing disciplinary cases, a new proposal will be formulated and presented to the General Assembly.

145. The Secretary-General will continue to review the emerging developments with regard to the preconditions for delegation of disciplinary authority and will report back to the General Assembly on the subject at its sixty-seventh session.

2. Independence of the Management Evaluation Unit

146. In its resolution 63/253, the General Assembly requested the Secretary-General to further clarify the role of the Department of Management of the Secretariat in the evaluation process, in order to ensure the appropriate independence of the Management Evaluation Unit.

147. The Advisory Committee on Administrative and Budgetary Questions, in its report on the subject, commented on the role of the Management Evaluation Unit in reviewing contested administrative decisions following the completion of a disciplinary process (A/63/545, para. 23). The mandate of the Unit was subsequently limited to the review of administrative decisions relating to contracts of employment or terms of appointment.

148. Within the context of its current mandate, the Management Evaluation Unit operates as a separate unit within the Office of the Under-Secretary-General for Management. The Unit reviews requests for management evaluation and presents its findings and recommendations to the Under-Secretary-General for Management in the form of a draft management evaluation letter addressed to the staff member requesting management evaluation. The Under-Secretary-General reviews the management evaluation letter, and consults with the Unit if necessary. The management evaluation letter, signed by the Under-Secretary-General, represents that the findings and recommendations of the Unit are endorsed by the Secretary-General.

149. The Unit operates independently from decision makers whose decisions are subject to management evaluation, and from the Administration's legal advisers, including those that represent the Administration before the Tribunals, that is the Office of Legal Affairs and the Administrative Law Section. The Under-Secretary-General for Management has the delegated authority to indicate the Secretary-General's endorsement of the Unit's recommendations and, in practice, the recommendations of the Unit are routinely endorsed and implemented. The overriding interest of the Under-Secretary-General for Management is to ensure that cases are fairly and impartially reviewed so that the cases involving managerial

error do not needlessly proceed to the Dispute Tribunal. Recent statistics show that in a significant majority of cases where staff members proceed to the Dispute Tribunal following receipt of a management evaluation, the outcome of the case has remained unchanged following review by the Tribunal.

150. Finally, the Unit and the Under-Secretary-General for Management provide mutual support in the area of managerial accountability. The Under-Secretary-General supports the Unit by ensuring that managers respond to requests for comments on management evaluations adequately and in a timely manner. In this regard, compliance with requests for comments on management evaluations has recently been included in senior managers' compacts between the Secretary-General and heads of departments and offices. The Unit assists the Under-Secretary-General to ensure managerial accountability in the Secretariat by maintaining records on the timeliness and adequacy of managers' responses to requests for management evaluation and by regularly raising issues on management practice that arise from an analysis of its caseload.

3. Monetary compensation awarded by the Tribunals

151. In its resolution 64/233, the General Assembly endorsed the recommendations of the Advisory Committee on Administrative and Budgetary Questions contained in its report of October 2009 on administration of justice (A/64/508). In response to the first recommendation of the Advisory Committee, the present report of the Secretary-General provides statistical data regarding monetary compensation awarded by the Dispute Tribunal and the Appeals Tribunal, identifying the indirect costs associated with appeals and the aspects of staff administration giving rise to a large number of appeals.

152. The Dispute Tribunal disposed of 220 cases from 1 July 2009 through 30 June 2010. The compensation awarded by the Tribunal during this period is set out in annex I to the present report.

153. The Appeals Tribunal disposed of 64 cases from 1 July 2009 through 30 June 2010. The compensation awarded by the Tribunal is set out in annex II to the present report.

154. As is set out in paragraph 25 above, the greatest number of claims before the Tribunals related to non-renewal of contracts, separation and non-promotion.

4. Status of the judges of the United Nations Appeals Tribunal and their entitlements

155. The General Assembly in paragraph 7 of its resolution 64/233, requested the Secretary-General to report on the status of the judges of the Appeals Tribunal and their entitlements, including travel and daily subsistence allowance.

156. Neither the Secretary-General nor the General Assembly has explicitly addressed the status of the judges of the Appeals Tribunal. In a letter from the Legal Counsel to the President of the United Nations Administrative Tribunal, dated 14 February 2005, the Office of Legal Affairs advised that the members of the Administrative Tribunal were considered "experts on mission" for the purposes of the Convention on the Privileges and Immunities of the United Nations. As judges of the Appeals Tribunal are expected to hold sessions with the same frequency as the

judges of the United Nations Administrative Tribunal, they would also have the status of "experts on mission".

157. The General Assembly, by its resolution 62/228, approved the framework of the new system, with the Dispute Tribunal serving as the first instance tribunal and the Appeals Tribunal as the appellate instance tribunal of the two-tier formal system. In accordance with that resolution, the Appeals Tribunal is composed of seven judges. The Tribunal sits in sessions, which may take place in Geneva, Nairobi or New York, as required by its caseload. The Registry of the Tribunal is located in New York.

158. The status of the judges of the Dispute Tribunal was set out in paragraph 82 of the report of the Secretary-General on administration of justice at the United Nations of August 2008 (A/63/314):

> "In his report of 23 August 2007, the Secretary-General stated that the judges of the Dispute Tribunal would be considered United Nations officials and that the non-staff compensation proposed would comprise salary and allowances equivalent to United Nations staff members at the Director level, and honorariums for judges of the Appeals Tribunal equivalent to rates applicable to the International Labour Organization (ILO) Administrative Tribunal, to provide for the services of judges rendering decisions on Appeals Tribunal cases."

159. The rates of honorarium for the judges of the Appeals Tribunal were set out in the same report (ibid., para. 83), but it was silent on the other conditions of service and entitlements for judges of the Tribunal:

> "It is also the intention of the Secretary-General to pay an honorarium to the judges on the Appeals Tribunal for each decision rendered, using rates equivalent to those applied to the judges of the ILO Administrative Tribunal: head judges would receive $2,400 per judgement, and participating judges would receive $600 per judgement."

160. Further, in the annex to his report (A/63/314), the Secretary-General proposed a list of benefits and entitlements for judges of the Dispute Tribunal without providing similar information for judges of the Appeals Tribunal.

161. In accordance with the conditions of service for the judges of the former United Nations Administrative Tribunal, the predecessor of the Appeals Tribunal, who were entitled to business class travel, regardless of the duration of travel; and to additional daily subsistence allowance as applicable to high-level United Nations officials at the rank of Assistant Secretary-General and above.

162. Presently, the travel entitlements for the judges of the Appeals Tribunal are set by the Secretariat at the level of a D-2 staff member as is the case for the judges of the Dispute Tribunal. While travelling on official business, the judges receive daily subsistence allowance in the amount of 100 per cent, without the additional 40 per cent customarily paid to high-level United Nations officials. They are entitled to fly in a business class on trips of nine hours or longer, except when otherwise requested and approved by the Under-Secretary-General of the Department of Management on an exceptional basis.

163. In its resolution 63/253, the General Assembly approved the proposed conditions of service of the Appeals Tribunal set out in the report of the Secretary-

General (A/63/314) and also decided that the conditions of service referred to in paragraph 30 of the resolution should be treated separately from the conditions of service of other judicial appointments in the United Nations system.

164. Given that the Secretary-General did not specify the travel entitlements for the Appeals Tribunal judges in his report on administration of justice of August 2008 (A/63/314), the General Assembly did not specifically establish their conditions of service. Based on the above information, the Secretary-General recommends that the travel privileges and the level of daily subsistence allowance previously provided to the former United Nations Administrative Tribunal judges should also be accorded to the judges of the Appeals Tribunal.

5. Recourse mechanisms for non-staff personnel

165. In paragraph 9 of its resolution 64/233, the General Assembly requested the Secretary-General to analyse and compare the respective advantages and disadvantages, including the financial implications, for a number of options that were enumerated in that paragraph. The response of the Secretary-General is as follows.

166. Preliminarily, the Secretary-General notes that some of this information has been provided to the General Assembly in prior reports on the subject of administration of justice. In particular, information as to the recourse mechanisms for non-staff personnel is set out in the report of the Secretary-General on administration of justice (A/62/782) and the note by the Secretary-General (A/62/748) entitled "Administration of justice: further information requested by the General Assembly".

167. The General Assembly, in paragraph 9 of its resolution 64/233, has requested the Secretary-General, with regard to remedies available to different categories of non-staff personnel, to analyse and compare the respective advantages and disadvantages, including the financial implications, of the options set out below, bearing in mind the concerning dispute settlement mechanisms for non-staff personnel, including the United Nations Commission on International Trade Law (UNCITRAL) arbitration clause, and to report thereon in his report pursuant to paragraph 59 of resolution 63/253:

> **"(a) Establishment of an expedited special arbitration procedure conducted under the auspices of local, national, or regional arbitration associations, for claims under twenty-five thousand United States dollars submitted by personal service contractors;"**

168. As reported by the Secretary-General in his report on the administration of justice (A/62/748 and Corr.1), only 16 claims by consultants or individual contractors during the period 1996 to 2006 were referred to the Office of Legal Affairs, of which only two proceeded to arbitration. This number results from the fact that the great majority of cases involving non-staff personnel are resolved amicably through direct negotiations. Thus, the Organization has limited experience with formal dispute settlement mechanisms with non-staff personnel.

169. With respect to the two arbitrations that were conducted under the UNCITRAL Arbitration Rules, in the first case the arbitration was conducted with a sole arbitrator and resulted in the claims being denied. However, the Organization was required to pay $8,323 for the Claimant's arbitration expenses and $12,218 for the

Arbitrator's fee and expenses. Additionally, the Organization incurred significant costs for the staff time required to support the arbitration, which was managed directly by the Office of Legal Affairs. The second arbitration was conducted by a sole arbitrator and the Organization was required to pay compensation in the amount of $1,626.14. Each party was responsible for its own fees and expenses and the Arbitrator waived his fees and expenses. Again, the Organization incurred significant costs for the staff time required to support the arbitration, which was directly managed by the Office of Legal Affairs.

170. Initial exploration of the possibility of conducting a special arbitration under the auspices of arbitration associations indicates that arbitral organizations do have "fast track" procedures for arbitration, which allow arbitral proceedings to be completed in shorter time frames with some cost savings. For example, a United States-based national arbitration association provides for an expedited arbitration with a sole arbitrator with strictly defined timelines. The costs of such a procedure include an initial filing and case service fees of approximately $1,000 and fees for the arbitrator, capped at $1,100. A European arbitration association also has an expedited arbitral procedure that would allow proceeding on the basis of documentary evidence. However, the registration fee is $4,091 and arbitrator's fees range from $1,000 to $3,000.

171. Although such expedited procedures exist, arbitrations within the United Nations context take place under UNCITRAL Arbitration Rules, which do not have a fast track procedure. However, the parties can agree on several elements contained in the "fast track" procedures referred to above, such as reduced timelines for the actions envisioned under the Rules; use of a sole arbitrator; and proceeding on the basis of documentary evidence or agreement to a limited number of oral hearings. Such agreements would have the effect of expediting the arbitral process. Arbitral associations having their own special procedures for fast track arbitrations do not necessarily agree to conduct such arbitrations under the UNCITRAL Arbitration Rules, and may require use of their own rules.

172. Thus, based on the experience of the Organization, and taking into account the foregoing, initiating a formal arbitration even under special procedures, for claims valued at $25,000 or less, would not necessarily be efficient and effective for the Organization, giving the costs associated with such arbitrations, including the staff time and resources for handling of such arbitrations, and considering that they may not then take place on the basis of the UNICTRAL Arbitration Rules. Should the General Assembly wish to adopt such a mechanism for resolution of disputes with non-staff personnel, the Organization would require additional staff resources. Such small claims may continue to be addressed more effectively through direct negotiations with a view to reaching an amicable settlement:

> **"(b) Establishment of an internal standing body that would make binding decisions on disputes submitted by non-staff personnel, not subject to appeal and using streamlined procedures."**

173. One possibility for handling grievances raised by non-staff personnel would be the creation of an internal standing body that had the power to make binding decisions. The decisions of this internal standing body would not be subject to appeal and would employ streamlined procedures.

174. However, a number of questions arise as to how this internal standing body would be created, where it would be located, and how its procedures would be streamlined while still affording the requisite due process to the applicants. In principle, the UNCITRAL rules set out the accepted international standards for an arbitration process, so it is difficult to see which practices could be "streamlined" without leading to concerns about due process.

175. Equally, the establishment of a separate body would entail additional costs. It would, in principle, be serving approximately 45,000 non-staff personnel located around the globe. In order to meaningfully serve the non-staff personnel away from headquarters, it might be necessary to establish locations for this internal standing body outside of New York. Even if the internal standing bodies themselves were composed on a voluntary or ad hoc basis, they would require some permanent staffing to support their operation. Additionally, there is a question of whether, once established, the number of claims to such a body would rise as claimants chose to test the new system, as they have in the new formal justice system since 1 July 2009. It is possible, therefore, that when each of these factors is considered, such a system might be as costly as allowing non-staff personnel to access the formal system.

176. In order to establish such internal standing bodies, the following elements would need to be determined: (a) the composition of such a body; (b) its powers; (c) its location(s); (d) all relevant administrative and financial arrangements; and (e) all resource requirements:

> **"(c) Establishment of a simplified procedure for non-staff personnel before the United Nations Dispute Tribunal, which would make binding decisions not subject to appeal and using streamlined procedures;"**

177. The Secretary-General noted in his report (A/62/748 and Corr.1) that providing access to the formal system of justice to non-staff personnel could present certain difficulties, particularly with regard to the ability of the formal system to address the various contractual terms and conditions of service relating to non-staff personnel.

178. As at 1 July 2010, the Dispute Tribunal had 290 cases pending. Providing access to non-staff personnel to the Dispute Tribunal would further burden it at a critical early stage in its institutional life.

179. The Secretary-General is of the view that adding non-staff personnel to the jurisdiction of the Dispute Tribunal at this stage would be detrimental to the new system. In particular, the terms and conditions applicable to staff members and the principles of administrative law, which underpin the Staff Regulations and Staff Rules and the administrative framework of the United Nations, do not apply to non-staff personnel. To the contrary, and as advised in the report of the Secretary-General (A/62/748 and Corr.1), non-staff personnel are governed by the terms of their contracts, as well as the conditions of service applicable to service contract holders or general conditions applicable to special service agreements. They are also subject to certain standards of conduct in connection with their service with the United Nations, including compliance with the standards set forth in Secretary-General's ST/SGB/2003/13. Any claims by non-staff personnel would thus be assessed on the basis of this contractual framework and general principles of international law or international commercial law. It would be important that the

different bodies of law and applicable frameworks to staff and non-staff personnel be maintained separate and distinct. The Secretary-General recommends that the General Assembly defer any decision to give non-staff personnel access to the Dispute Tribunal until such time that the Dispute Tribunal is well-established.

180. As reflected in his report (A/62/294), the Secretary-General reported 60,722 staff of the Secretariat and funds and programmes and 45,461 non-staff personnel, supporting United Nations activities around the globe, including non-staff personnel within the scope of the Dispute Tribunal, would almost double the total population using the formal system. This would require significant additional resources to be allocated to the formal system in order to accommodate the expansion. The Dispute Tribunal currently has 24 staff supporting the work of the Tribunal. Opening the formal system to non-staff personnel would also require the Dispute Tribunal to adjudicate matters not based on interpretations of the Staff Regulations and Staff Rules and related administrative issuances. This increased caseload and the increasing complexity of the system (i.e., expanding the jurisdiction to personnel who are not governed by the Staff Regulations and Staff Rules and related administrative issuances) is estimated to require twice the number of full-time and half-time judges, and doubling the staff of the Dispute Tribunal Registries.

181. The streamlined rules of procedure would have to be developed by the Dispute Tribunal once the additional resources have been made available:

> **"(d) Granting of access to the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, under their current rules of procedure, to non-staff personnel;"**

182. The Secretary-General reiterates the comments made under subparagraph (c) above, which are equally applicable to this option, except that the costs would be greater given that the non-staff personnel would also have recourse to the Appeals Tribunal.

183. The Secretary-General reiterates the concerns related to the importance of maintaining separate and distinct the bodies of law and applicable legal frameworks for staff and non-staff personnel. In particular, it would not be possible to have the Tribunals apply the same rules of procedure to non-staff personnel because as they are currently drafted, they reflect the Staff Regulations and Staff Rules, which are not applicable to non-staff personnel. For example, the management evaluation process established by staff rule 11.2 applies only to staff members. Thus, the rules of procedure would need to be modified to clarify the existing provisions applicable to non-staff personnel, and to include new provisions which would be exclusively applicable to non-staff personnel.

6. Other questions

184. In paragraph 8 of its resolution 64/233, the General Assembly requested the Secretary-General to report on the following topics:

> **"(b) An update concerning the exact number of persons other than staff personnel working for the United Nations and the funds and programmes under different types of contracts, including individual contractors, consultants, personnel under service contracts, personnel under special service agreements and daily paid workers;"**

185. In the United Nations Secretariat, the number of non-staff personnel not based in the field is 10,080. The Secretariat has 16,480 non-staff personnel in field operations. These numbers exclude any Secretariat consultants and individual contractors administered by UNOPS/UNDP.

186. As at 31 December 2009, UNDP had 24,435 service contractors and 19,919 Special Service Agreements.

187. In 2009, UNICEF issued 8,606 consultant and individual contractor contracts, for varying periods of time and with varying terms of reference and scope of deliverables, including some with only a single deliverable:

> **"(c) A description of the new procedure for management evaluation, including the types of work-related administrative decisions for which it is required, and of the procedure normally followed in other cases where non-staff personnel submit a complaint concerning a violation of contract that does not qualify for management evaluation;"**

188. A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment is required to submit to the Secretary-General in writing a request for a management evaluation of the administrative decision within 60 days of the date on which he or she received notification of the decision. The response of the Secretary-General, reflecting the outcome of the management evaluation, is communicated in writing to the staff member within 30 days of receipt of the request for management evaluation for staff members stationed at Headquarters, and within 45 days of receipt of the request for management evaluation for staff members stationed away from Headquarters.

189. Requests for a management evaluation may be received from: (a) staff members, former staff members, interns, type II gratis personnel, and volunteers (not including United Nations Volunteers) of the Secretariat (including Headquarters, offices away from Headquarters, regional commissions, peacekeeping and special political missions); and (b) persons submitting a claim in the name of an incapacitated or deceased staff member of the Secretariat.

190. To date, the types of work-related administrative decisions for which management evaluation has been requested have fallen into the following seven categories of cases: (a) separation from service; (b) appointments and promotion; (c) benefits and entitlements; (d) discriminatory treatment; (e) maladministration and lack of due process; (f) reassignment; and (g) other. The most numerous cases involve administrative decisions relating to separation from service, followed by cases involving decisions relating to appointments and promotions, and cases involving decisions relating to benefits and entitlements:

> **"(d) A compilation of the standard contracts and rules, including dispute settlement clauses, that govern the relations between the Organization and the various categories of non-staff personnel;"**

191. The standard contracts and rules governing relationships between the Organization and the various categories of non-staff personnel are set out in annex IV to this report:

> **"(f) Measures in place to provide for accountability of officials for causing financial loss to the Organization under the new system for**

administration of justice, including recovery action, as well as actions taken to enforce such accountability;"

192. With respect to the measures in place to provide for accountability of officials for causing financial loss to the Organization under the new system of justice, effective 1 July 2009, provisional staff rule 10.1 (b) was promulgated, providing:

> "Where (the) staff member's failure to comply with his or her obligations or to observe the standards of conduct expected of an international civil servant is determined by the Secretary-General to constitute misconduct, such staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of his or her actions, if such actions are determined to be wilful, reckless or grossly negligent."

193. Thus, under this rule, a staff member may be held personally liable for losses to the Organization where it has been determined that he or she has engaged in misconduct involving wilful, reckless or grossly negligent conduct. Provisional staff rule 10.1 (b) replaced former staff rule 112.3 on financial responsibility.

194. The administrative instruction on financial responsibility of staff members for gross negligence (ST/AI/2004/3) provides the procedures under which financial accountability is established. The procedures are being revised in order to take account of the abolition of the joint disciplinary committees pursuant to resolution 63/253.

IV. Views of the Secretary-General as chief administrative officer on issues that may have significant financial implications and impact on the interests of the Organization

A. Introduction

195. In paragraph 59 of its resolution 63/253, the General Assembly requested the Secretary-General to "conduct a review of the new administration of justice and to report thereon to the General Assembly at its sixty-fifth session". As part of that review, the Secretary-General has surveyed the emerging jurisprudence of the Dispute Tribunal and the Appeals Tribunal in order to draw the attention of the General Assembly to some of the significant issues, which in his view, as the chief administrative officer of the Organization, may have financial implications and an impact on the interests of the Organization.

196. A number of these issues have emerged from judgements of the Dispute Tribunal and have either been reviewed by the Appeals Tribunal or are the subject of ongoing appeals. The Secretary-General emphasizes that the development of the jurisprudence of the Dispute Tribunal and Appeals Tribunal is still in its early stages and that the discussion of these issues is without prejudice to the final determination by the Appeals Tribunal on these issues.

B. General issues

1. Relevance of Administrative Tribunal jurisprudence

197. The introduction of the new administration of justice system was not intended to begin with a clean slate, and the six decades of jurisprudence from the Administrative Tribunal provides an important resource to be drawn upon by the Dispute Tribunal and the Appeals Tribunal. Moreover, continuity in the application of Administrative Tribunal jurisprudence is an essential element for ensuring the rule of law in the United Nations, which requires certainty about the legal norms that will be applied by United Nations officials and that will be used to judge their conduct. In the context of human resources management, United Nations officials take into account established and consistent jurisprudence of the Administrative Tribunal as part of their decision-making.

198. During its first year, the jurisprudence of the Dispute Tribunal has reflected departures from the established jurisprudence of the Administrative Tribunal in the following three areas:

(a) The necessity of providing reasons for the non-renewal of fixed-term appointments. Since 1952, the Administrative Tribunal upheld the principle that fixed-term appointments have no legal expectancy of renewal. This principle has been affirmed by the General Assembly, which stated in its resolution 63/250 that "there shall be no expectations, legal or otherwise, of renewal or conversion of a fixed-term contract, irrespective of the length of service". As a consequence of this principle, the Administrative Tribunal affirmed, in its Judgement No. 1003, that the "Administration has no duty to give reasons for non-renewal or extension" of a fixed-term appointment. In one judgement, however, the Dispute Tribunal found that by declining to provide reasons for its non-renewal decision, the Organization violated the due process rights of a staff member who held an appointment of limited duration under the 300 series of the Staff Rules;

(b) The standard for establishing disciplinary misconduct and reviewing the imposition of disciplinary measures. The Administrative Tribunal consistently recognized the broad discretion of the Secretary-General in disciplinary matters, but certain judgements of the Dispute Tribunal have reflected a substantial departure from this jurisprudence. This issue is examined in greater detail in paragraph 201 (a) of the present report; and

(c) The burden of proof for alleging discrimination, prejudice or other improper motives. Whereas the Administrative Tribunal required the party alleging discrimination, prejudice or other improper motivation to bear the burden of providing compelling evidence to support such allegations, Dispute Tribunal Judgement No. 2009/95 stated that "neither the staff member nor the Secretary-General should be in a favoured position" and therefore the Secretary-General should be required to prove that an allegation of discrimination is without merit, even if the staff member has proffered no evidence in support of his or her claim. The matter would then be decided on the basis of the preponderance of evidence. Moreover, where there is no preponderance of evidence one way or another, the same Judgement of the Dispute Tribunal held that the "more appropriate rule is that the impugned administrative decision should be regarded as unjustified". Dispute

Tribunal Judgement No. 2009/83 has confirmed the "well-known maxim of law that the party who alleges a fact bears in principle the burden of proving its veracity".

199. The Secretary-General notes that uncertainty about the applicability of Administrative Tribunal jurisprudence will have a detrimental impact on the Organization and its ability to conduct its actions in accordance with established legal principles and norms. Uncertainty about the jurisprudence of the Administrative Tribunal relating to disciplinary matters in particular undermines the ability of the Secretary-General to hold staff members accountable for misconduct, including by conducting disciplinary proceedings. Accordingly, the Secretary-General recommends that the General Assembly recognize the continuing relevance and persuasive force of the jurisprudence of the Administrative Tribunal, particularly, where such jurisprudence reflects established legal principles and norms and where there is no conflict with changes introduced by the General Assembly in establishing the new administration of justice system.

2. Scope of the Secretary-General's discretion

200. Article 97 of the Charter of the United Nations establishes the Secretary-General as the chief administrative officer of the Organization and Article 101 provides for his authority to appoint staff under regulations established by the General Assembly. As further elaborated in the Staff Regulations established by the General Assembly, the Secretary-General has the power to appoint staff members, to impose disciplinary measures on staff members who engage in misconduct, and to make provision for the classification of posts. In its resolution 51/226, the General Assembly reiterated its full support for the Secretary-General as the chief administrative officer of the Organization, and underlined its full respect for his prerogatives and responsibilities under the Charter of the United Nations in the context of human resources management.

201. The Administrative Tribunal also recognized the broad discretionary authority of the Secretary-General's authority in personnel matters in three main areas: (a) appointments and promotions; (b) disciplinary matters; and (c) classification of posts, and consistently declared that it will not substitute its own judgement for that of the Secretary-General in these areas. The Secretary-General has the responsibility to ensure that the administration of personnel is in accordance with General Assembly resolutions establishing the human resources framework for the Organization, and he is accountable to the General Assembly for his performance in this area. While in some cases, the Dispute Tribunal has affirmed the Secretary-General's broad discretionary authority in human resources management, in other cases the Dispute Tribunal appears to be inclined towards substituting its own judgement for that of the Secretary-General even in areas where the intent of the General Assembly has been made clear:

(a) The Administrative Tribunal consistently recognized the broad discretion of the Secretary-General in disciplinary matters and deferred to the Secretary-General's determinations regarding the evaluation of the facts, whether the impugned conduct constitutes misconduct, and the appropriate disciplinary measure to be imposed. So long as the Secretary-General demonstrated a reasonable basis for making factual findings in a disciplinary case, the Administrative Tribunal declined to substitute its own judgement for that of the Secretary-General, even though it may be possible to reach different factual conclusions from the same set of

evidence. In a number of cases involving challenges to the conduct or outcome of disciplinary proceedings, the Dispute Tribunal appeared to substitute its own judgement for that of the Secretary-General and determined that decisions to impose disciplinary measures or not to undertake a preliminary investigation were erroneous, since different inferences could be drawn from the evidence. Moreover, the Dispute Tribunal appeared to have raised the threshold required in order to establish that a staff member has engaged in misconduct;

(b) Whereas the Administrative Tribunal recognized in its Judgement No. 1419 (2008) that it is "neither the General Assembly nor the Secretary-General, and therefore it is not in a position to substitute its judgement for policy decisions on personnel matters", the Dispute Tribunal determined in two cases that certain posts should have been reclassified at a higher level. In the first case, a classification review determined that the functions of the post did not justify a reclassification of the post to a higher level. In the second case, the Secretary-General declined to include a proposal for the reclassification in the programme budget submitted to the General Assembly, as he considered that the reclassification would not be consistent with the General Assembly's guidelines on reclassification. The reclassification of posts is subject to the approval of the General Assembly during the budgetary process. Moreover, in its resolution 56/253, the General Assembly emphasized that proposals for the reclassification of posts are to be of an "exceptional nature" and are required to be accompanied by a "justification in terms of a change in the nature or scope of the work". In both cases, the Dispute Tribunal ordered the reclassification of the posts to a higher level in the absence of General Assembly approval, determined that the incumbents should have been promoted to the reclassified posts, and awarded compensation on this basis; and

(c) In one case concerning the selection for an Assistant Secretary-General post, the Dispute Tribunal declined to consider the relevance of General Assembly resolution 51/226, which affirmed the Secretary-General's discretionary authority to make senior appointment outside of established procedures. In response to arguments emphasizing the public nature of the duties exercised by the Secretary-General and the need to be mindful of the concerns of Member States, the Dispute Tribunal, in its Order No. 40 (2010), asserted that "it is not concerned with the role of the United Nations in international affairs" and "in its character as an employer the United Nations is simply a corporation". In other judgements, the Dispute Tribunal has drawn conclusions or inferences that one staff member was superior to other candidates, and awarded compensation on this basis, even though the evaluation of the skills and competencies of candidates lies within the prerogative of the Secretary-General.

202. In view of the foregoing, the Secretary-General requests the General Assembly to confirm that the exercise of judicial review by the Dispute Tribunal and the Appeals Tribunal should be undertaken with full respect for the prerogatives of the General Assembly and for the role of the Secretary-General as the chief administrative officer of the Organization and for his prerogatives and responsibilities under the Charter of the United Nations.

3. Harmonization of proceedings before the Dispute Tribunal

203. In his proposals to the General Assembly for the new administration of justice system, the Secretary-General recommended that cases should be reviewed at the

Dispute Tribunal level by a panel of three judges, in order to ensure that the development of the Organization's internal administrative law would be informed by a consideration of diverse legal traditions and practices, as well as cultural and linguistic backgrounds, rather than by the perspective of a single judge.

204. During the first year of the administration of justice system, the Dispute Tribunal in different locations have developed a broad range of practices with respect to the conduct of proceedings. The Dispute Tribunal in New York and Nairobi hold more oral hearings than the Dispute Tribunal in Geneva, which rarely calls witnesses to testify. The submission of written testimony from witnesses who are unable to participate in the oral hearings is routinely accepted by the Dispute Tribunal in Geneva and Nairobi, but less so with the Dispute Tribunal in New York. Reliance on the proceedings intrinsic to particular national jurisdictions, as well as on national jurisprudence, has also been observed in the Dispute Tribunal in certain cases.

205. These divergent practices may leave staff members with the perception that they have a fuller opportunity to present their case before the Dispute Tribunal in one location, rather than in another. Reliance on procedures from particular legal traditions may also place parties who come from another legal tradition at a distinct disadvantage when advocating their case before the Dispute Tribunal. As previously discussed, the Secretary-General considers that a confirmation of the continuing relevance of Administrative Tribunal jurisprudence would help to clarify the relevant legal principles to be used when reviewing cases before the Dispute Tribunal.

206. The Secretary-General recalls his prior recommendation for the establishment of three judge panels in the Dispute Tribunal representing a diversity of legal traditions, noting that it would facilitate the harmonization of proceedings before the Dispute Tribunal. The Secretary-General further recommends that the General Assembly confirm that the development of jurisprudence of the Dispute Tribunal and the Appeals Tribunal should take into account the international character of the Organization and reflect the diversity of legal traditions.

C. United Nations Dispute Tribunal

207. The present section examines issues that have arisen with regard to the interpretation of the statute and the rules of procedure of the Dispute Tribunal.

1. Scope of the jurisdiction and competence of the Dispute Tribunal

General scope of the Dispute Tribunal's authority

208. The General Assembly, in paragraph 28 of its resolution 63/253, affirmed that "the United Nations Dispute Tribunal and the United Nations Appeals Tribunal shall not have any powers beyond those conferred under their respective statutes".

209. Notwithstanding this provision, the Dispute Tribunal has exercised powers that it considered to be inherent in the jurisdiction of all courts. The Dispute Tribunal has asserted that it has the inherent authority to find and sanction contempt, even though there is no specific provision in the Dispute Tribunal statute authorizing it to exercise such an authority. By contrast, the absence of a provision in its statute

authorizing the Administrative Tribunal to find and sanction contempt led the Administrative Tribunal to conclude that it had no such authority.

210. The Dispute Tribunal has also asserted that, on the basis of article 10.8 of its statute, authorizing the Dispute Tribunal to refer cases to the Secretary-General for possible action to enforce accountability, it was empowered to hold separate hearings (unrelated to its review of the application filed before the Dispute Tribunal) to determine the culpability of a staff member and make findings of misconduct that would be binding on the Secretary-General. The Secretary-General considers that the exercise of the Dispute Tribunal's authority under article 10.8 in this manner would impinge upon the role of the Secretary-General as the chief administrative officer, which includes his authority to determine when staff members have engaged in misconduct and to impose appropriate disciplinary measures.

211. In view of the foregoing, the General Assembly may wish to reaffirm that the Dispute Tribunal and the Appeals Tribunal shall not have any powers beyond those conferred under their respective statutes and the exercise of such powers shall be in accordance with the role of the Secretary-General as the chief administrative officer, which includes his authority to determine when staff members have engaged in misconduct and to impose appropriate disciplinary measures.

Jurisdiction of the Dispute Tribunal over acts and omissions by independent entities in connection with the performance of their operational mandates

212. Article 2.1 (a) of the Statue of the Dispute Tribunal establishes the jurisdiction of the Dispute Tribunal over an "administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment". In interpreting the term "administrative decision", the Administrative Tribunal ruled in Judgement No. 1359 (2007) that a decision made by the Ombudsman not to investigate a harassment complaint did not constitute an administrative decision, since any acts or omissions on the part of the Ombudsman could not be attributed to the Administration in view of the independent status of the Ombudsman. However, in a recent case, the Dispute Tribunal affirmed its competence to review a determination made by the Ethics Office, also an independent entity, that a staff member was not subject to retaliation.

213. The Secretary-General notes that a number of entities with an independent status have been established pursuant to General Assembly resolutions. These entities include the Ombudsman, the Office of Internal Oversight Services, the Ethics Office and the Office of Administration of Justice. The issue of the competence of the Dispute Tribunal over acts or omissions by these independent entities raises difficult questions.

214. On the one hand, if the Dispute Tribunal did not have jurisdiction over actions and omissions by independent entities, there may be concerns that staff members would not have any recourse for wrongful acts and omissions by independent entities. On the other hand, for the Secretary-General to be liable for a decision by OIOS not to investigate a complaint or a determination by the Ethics Office that a staff member was not subject to retaliation, he would also need to have the authority to modify such a decision or determination. The Secretary-General cannot be held liable for acts or omissions that are beyond the scope of his authority. Indeed, if the Secretary-General were to require OIOS to initiate or terminate an investigation or to instruct the Ethics Office to modify a determination as to whether a staff member

had been subject to retaliation, such instructions would fundamentally undermine the independent status of these entities.

215. The Secretary-General further notes that any act or omission by an independent entity is preliminary in nature, and will ultimately lead to an administrative decision by the Secretary-General, which could then be appealed to the Dispute Tribunal. For example, if a staff member contends that OIOS wrongfully initiated an investigation against him and disciplinary proceedings are commenced on the basis of such an OIOS investigation, the staff member will have an opportunity to raise concerns regarding the OIOS investigation during the course of the disciplinary proceedings and to challenge the outcome of the disciplinary proceedings.

216. Another independent entity whose decisions have been challenged by staff members before the Dispute Tribunal is the International Civil Service Commission. The Commission was established by the General Assembly to regulate and coordinate the conditions of service of the United Nations common system and consists of 15 members appointed by the General Assembly. In one case pending before the Dispute Tribunal, a staff member has challenged a decision of the Commission to downgrade the hardship classification of a duty station. However, even if the Dispute Tribunal were to conclude that the hardship classification had been erroneously determined, the Secretary-General would have no authority to order the Commission to change its hardship classification. The members of the Commission perform their functions in full independence and as a body the Commission is responsible to the General Assembly, not the Secretary-General.

217. Noting that staff members will ultimately have recourse for acts or omissions by independent entities (by challenging the administrative decisions taken on the basis of determinations or recommendations made by such entities), the Secretary-General requests the General Assembly to confirm that he cannot be held liable for acts or omissions by independent entities in connection with the performance of their operational mandates, as such liability would be inconsistent with the independent status of these entities.

2. Rules of procedure of the Dispute Tribunal

218. Article 7 of the statute of the Dispute Tribunal provides that the Dispute Tribunal shall establish its own rules of procedure, which are subject to approval by the General Assembly. The rules of procedure of the Dispute Tribunal and the Appeals Tribunal were approved by the General Assembly on 16 December 2009 in its resolution 64/119. While the rules of procedure have provided helpful guidance, the Secretary-General has the following observations regarding the rules, which may facilitate the expeditious adjudication of matters before the Dispute Tribunal.

219. Article 9 of the Dispute Tribunal rules of procedure states that "a party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law". Under this provision, a non-meritorious claim cannot be dismissed, so long as there is a dispute as to the material facts. By contrast, the administrative tribunals of other intergovernmental organizations provide for mechanisms to address non-meritorious claims. For example, article 76 of the rules of procedure of the European Union Civil Service Tribunal states that "where the action is, in whole or in part, manifestly inadmissible or manifestly lacking any foundation in law, the Tribunal may, without taking further steps in the proceedings, give a decision by way of reasoned order". In 2009,

31 out of 155 cases before the European Union Civil Service Tribunal were resolved on the basis of this provision. The General Assembly may wish to consider the utility of introducing a similar mechanism to enable the Dispute Tribunal to address non-meritorious claims more expeditiously.

220. Under article 17.6 of the rules of procedure of the United Nations Dispute Tribunal, the Dispute Tribunal has the authority to order the personal appearance of a witness or expert at an oral proceeding and to determine the means for satisfying the requirement for personal appearance, which may be fulfilled by video link, telephone or other electronic means. Article 16.5 of the rules of procedure of the Dispute Tribunal further states that "if the Dispute Tribunal requires the physical presence of a party or any other person at the hearing, the necessary costs associated with the travel and accommodation of the party or other person shall be borne by the Organization". The Secretary-General recalls that in its resolution 64/243, the General Assembly decided to "reduce non-post resources by 2 per cent", a reduction that affected the availability of resources for travel. In view of the simultaneous need to control travel-related costs and continue to satisfy orders of the Dispute Tribunal for personal appearance, the General Assembly may wish to support the increased use of alternative means for giving testimony, such as increased use of videoconferencing facilities.

3. Production of confidential documents of the Organization

221. Article 9 of the statute of the United Nations Dispute Tribunal provides that the "Dispute Tribunal may order production of documents or such other evidence as it deems necessary". This authority is further elaborated in article 18 of the rules of procedure of the Dispute Tribunal, which authorizes the Dispute Tribunal to "order the production of evidence for either party at any time" and to "impose measures to preserve the confidentiality of evidence, where warranted by security interests or other exceptional circumstances". While article 18 envisages that protective measures may be imposed to prevent the further dissemination of confidential evidence beyond the parties to the proceedings, it does not address the issue of whether confidential documents need to be disclosed by the parties in all cases.

222. By contrast, the administrative tribunals of some intergovernmental organizations have adopted more narrowly tailored rules to ensure that legitimate organizational interests are not compromised by the production of confidential documents. For example, article 10.1 of the statute of the Administrative Tribunal of the International Monetary Fund provides:

> "The Tribunal may require the production of documents held by the Fund, except that the Managing Director may withhold evidence if he determines that the introduction of such evidence might hinder the operation of the Fund because of the secret or confidential nature of the document. Such a determination shall be binding on the Tribunal, provided that the applicant's allegations concerning the contents of any document so withheld shall be deemed to have been demonstrated in the absence of probative evidence to the contrary. The Tribunal may examine witnesses and experts, subject to the same qualification."

223. The approach reflected in article 10.1 of the statute of the Administrative Tribunal of the International Monetary Fund has also been followed by the

Administrative Tribunal of the African Development Bank, which contains an identical provision in article 9 of its statute.

224. While the authority of the European Union Civil Service Tribunal to order the production of documents is as broad as that of the Dispute Tribunal, it also recognizes that orders for the production of documents may be refused. Article 24 of the statute of the European Court of Justice (which governs the European Union Civil Service Tribunal), states that "the Court may require the parties to produce all documents and to supply all information which the Court considers desirable. Formal note shall be taken of any refusal".

225. In view of the general nature of the rules of procedure of the Dispute Tribunal, further guidance is needed on the procedures for ensuring that legitimate organizational interests are not compromised by the production of confidential documents. In one judgement, the Appeals Tribunal stated that where the Dispute Tribunal erred in ordering the production of a privileged document and drew conclusions from the non-production of the document that erred on questions of law or fact, the party may then appeal the judgement containing such erroneous conclusions. The Appeals Tribunal therefore acknowledged that a Dispute Tribunal's order for the production of a confidential document would constitute an error that would form a ground for appeal of the final judgement.

226. The General Assembly may wish to consider amending the statute of the Dispute Tribunal to recognize that where the production of confidential documents would undermine significant organizational interests, such as the security of staff members and the confidentiality of communications between the Organization and Member States, the Secretary-General may decline to produce confidential documents or portions thereof and the Dispute Tribunal may then draw appropriate and reasonable inferences from any such non-production.

4. Interpretation of the term "appointment, promotion and termination"

227. Pursuant to article 10.5 (a) of the statute of the Dispute Tribunal, the Dispute Tribunal is required to order compensation as an alternative to the rescission of a contested decision, where the contested decision "concerns appointment, promotion and termination". The formulation of this provision recognizes that any decision relating to the appointment, promotion or termination of a staff member may also affect the rights of other staff members. For example, if the Dispute Tribunal were to rescind an appointment decision, without any alternative remedy, the rights of the selected staff member would thereby be adversely affected. Moreover, requiring a staff member to be appointed to a particular position may have negative effects on the operational effectiveness of an office, when that staff member was not selected by the programme manager. Accordingly, the requirement in article 10.5 for the Dispute Tribunal to order compensation as an alternative to the rescission of decisions concerning appointment, promotion and termination is consistent with the need for the Secretary-General to have flexibility in the management of personnel, by providing an appropriate remedy to staff members whose claims have been upheld by the Dispute Tribunal while, at the same time, ensuring that the rights of other staff members and the operational effectiveness of the Organization are not undermined.

228. In one case involving the interpretation of article 10.5 (a), the Dispute Tribunal ordered the reinstatement of a staff member (whose appointment to a particular

position had been rescinded) and compensation as an alternative to reinstatement; however, on appeal by the staff member, the Appeals Tribunal ruled that the appropriate remedy should have been reinstatement only, without the alternative of compensation. The Appeals Tribunal reasoned that the reinstatement of an individual who was already a staff member does not constitute an "appointment" within the meaning of article 10.5 (a).

229. The Secretary-General notes that when recruitment is undertaken for a vacant position, there are different possibilities for how the successful candidate may be appointed following the completion of the selection process. If the successful candidate is already in the United Nations Secretariat, the appointment may be effected through promotion or reassignment without a new letter of appointment. If the successful candidate is already within other organizations of the United Nations common system, he or she will receive a new appointment that may be effected through transfer or secondment with a new letter of appointment. If the successful candidate is not already within the United Nations system, he or she will receive a new appointment. Therefore, any selection decision may simultaneously involve decisions on assignment, transfer, secondment, promotion or appointment, depending on whether the candidates are already within the United Nations Secretariat, other organizations of the United Nations common system or outside of the United Nations common system, whether the movement is interdepartmental or intra-departmental, and the level of their current position.

230. The term "termination" in article 10.5 (a) may also raise questions of interpretation. Pursuant to staff rule 9.6, the term "termination" does not include abandonment of post or expiration of appointment. Therefore, if a programme manager separates a staff member on the grounds of abandonment of post, article 10.5 (a) may be interpreted as permitting the Dispute Tribunal to order the rescission of such a decision without the alternative of compensation.

231. The term "appointment, promotion and termination" is also used in article 10.2 of the statute of the Dispute Tribunal, which precludes the Dispute Tribunal from suspending the implementation of a contested administrative decision "in cases of appointment, promotion or termination". This provision again reflects the acknowledgment that decisions concerning appointment, promotion or termination cannot be suspended over a long period of time pending the adjudication of a matter by the Dispute Tribunal, as the rights of other staff members and the operational effectiveness of the Organization will be adversely affected.

232. To clarify the scope of articles 10.2 and article 10.5 (b), the Secretary-General recommends that the General Assembly should amend the reference to decisions concerning "appointment, promotion and termination" in these provisions to refer to decisions concerning "appointment, selection, transfer, secondment, assignment, promotion and separation".

5. Award of remedies

233. The Dispute Tribunal may order compensation either as the sole remedy or as an alternative to the rescission of a contested decision. The details of the compensation awarded by the Dispute Tribunal during its first year are set out in annex II to the present report. The Dispute Tribunal's authority to award compensation is limited in two significant respects. First, the amount of compensation is normally limited to two years' net base salary, although a higher

compensation may be permitted in exceptional cases. Second, the Dispute Tribunal is prohibited from awarding exemplary or punitive damages.

234. One issue examined by the Dispute Tribunal during its first year was whether the authority to award compensation, either as a remedy in itself or as an alternative to rescission of a decision or specific performance, is limited to compensation for actual injury incurred by the staff member. The Dispute Tribunal has awarded compensation in the following cases: (a) for the lost chance of being considered for a position or for the lost chance of being appointed to a position, based on the speculation that the staff member had a "high" chance of being appointed, a 50 per cent chance of being appointed or even a 10 per cent chance of being appointed; (b) for a procedural error even when the staff member did not suffer any injury as a result of such error; and (c) for violating obligations of courtesy, even though the Dispute Tribunal found that the contested administrative decision was lawful.

235. The Secretary-General acknowledges that moral damages can provide a basis for compensation, particularly where there is evidence of injury to a staff member's physical or psychological well-being, dignity, reputation or privacy. Under the previous system, the Administrative Tribunal, in its Judgement No. 169 (1973), declined to award compensation for moral injury, where the staff member had not provided any "precise evidence to justify it". Similarly, the International Labour Organization Administrative Tribunal ruled that "injury is not to be presumed: mere mention of 'worries', 'psychological stress' and 'deprivation of rights' will not do". In its Judgement No. 2010-UNAT-025 the Appeals Tribunal overturned an order of compensation by the Dispute Tribunal on the grounds that there was no evidence of the moral damages for which compensation had been ordered. The Dispute Tribunal has awarded compensation for moral damages for the frustration of undertaking litigation before the Dispute Tribunal, and for the presentation of evidence about a staff member's academic credentials during the Dispute Tribunal hearings, when the administrative decision challenged by the staff member was based, in part, on the validity of the staff member's academic credentials.

236. Article 10.5 (b) of the statute of the Dispute Tribunal provides that compensation shall not normally exceed two years' net base salary, but that a higher compensation may be ordered in exceptional cases. The Secretary-General had originally proposed that the Dispute Tribunal also be authorized to order interest and costs, but ultimately, these components of compensation were not approved by the General Assembly. The following components of compensation have been awarded by the Dispute Tribunal:

(a) The Dispute Tribunal has awarded interest, reasoning that if the General Assembly intended to prohibit the Dispute Tribunal from awarding interest, it would have included an express prohibition in the statute. In one case, the Appeals Tribunal ruled that interest is a necessary component of compensation and has ordered interest to be fixed at the United States prime rate applicable at the time the entitlement is due. The Appeals Tribunal further ordered the Secretary-General to pay an additional 5 per cent interest per year to be added from 60 days from date of distribution of the judgement until payment is made.

(b) The Dispute Tribunal has ordered the payment of attorney's costs, in a case where the staff member retained the services of outside counsel. However, staff rules 10.3 (a) and 11.5 (d) provide that staff members have a right to seek the

assistance of outside counsel in the context of disciplinary proceedings and challenges to administrative decisions, but such outside counsel shall be at their own expense.

(c) The Dispute Tribunal has ordered the Organization to readjust a staff member's pension entitlement to the level of the position to which the Dispute Tribunal considered the staff member should have been appointed. The payment of such a readjustment would bring the compensation paid to the staff member well over the two years' net base salary already awarded by the Dispute Tribunal in that case. The Dispute Tribunal reasoned that since pension payments constituted a periodic payment rather than a lump sum payment, the limitation on compensation to two years' net base salary was not applicable. By contrast, the Administrative Tribunal declined to award pension entitlements as part of the compensation that it awarded, noting that the amounts awarded to staff members should not be "supplemented with other amounts representing the equivalent of potential or future material benefits such as access to health care or to a retirement pension ... While the sums in question are indeed paid out by the Administration, they are contributions to special funds and are not defined as part of the allowances received by international civil servants" (United Nations Administrative Tribunal Judgement No. 1225 (2005)).

237. The General Assembly may wish to note the emerging jurisprudence of the Dispute Tribunal regarding the award of compensation. The Secretary-General recommends that the General Assembly confirm that compensation is for actual loss sustained as a result of the error or omission proved and that the applicant bears the onus of proof of the loss sustained.

D. Appeals Tribunal

238. The Appeals Tribunal conducted two sessions during the first year of the administration of justice system and, as of the writing of the present report, the judgements from the second session have not yet been issued. Accordingly, the Secretary-General has more limited observations regarding the statute and the rules of procedure of the Appeals Tribunal.

239. The Secretary-General notes that the rules of procedure of the Appeals Tribunal do not provide for any mechanism to address non-meritorious appeals expeditiously. Of the administrative tribunals of other intergovernmental organizations, only the European Union provides for appellate review. Judgements of the European Union Civil Service Tribunal may be appealed to the General Court. Article 111 of the rules of procedure of the General Court states that where an action is "manifestly inadmissible or manifestly lacking any foundation in law", the General Court may decide on an action "without taking further steps in the proceedings". The General Assembly may wish to consider the utility of introducing a similar mechanism to enable the Appeals Tribunal to address non-meritorious appeals more expeditiously.

240. Article 7.1 (c) of the statute of the Appeals Tribunal establishes a 45-day deadline for filing appeals.[3] In view of the limited resources of the parties and

[3] The Secretary-General notes that the deadline for appealing judgements of the European Union Civil Service Tribunal is two months (statute of the Court of Justice of the European Union, annex I, European Union Civil Service Tribunal).

delays encountered in transferring relevant files between duty stations, the Secretary-General considers that an extension of the deadline for filing appeals would facilitate a fuller briefing of the legal issues to be examined by the Appeals Tribunal. Moreover, an extension of the deadline would also not delay the review of an appeal by the Appeals Tribunal, which normally holds only two ordinary sessions per calendar year, pursuant to article 5.1 of the rules of procedure of the Appeals Tribunal. **The Secretary-General recommends that the General Assembly amend article 7.1 (c) of the Appeals Tribunal statute, to extend the deadline for filing appeals from 45 days to 90 days.**

V. Resource requirements

241. The Secretary-General has identified a number of areas in the formal justice system that require strengthening in order to fulfil the mandate that the new system be "independent, transparent, professionalized, adequately resourced and decentralized". For all of the reasons set out above, the Secretary-General recommends that the General Assembly consider enhancing the formal justice system with the following post and non-post resources:

(a) With respect to the Dispute Tribunal and its Registries, for the reasons set out in paragraphs 26 and 27 of this report, the Secretary-General recommends that the General Assembly appoint three additional full-time judges (one each Geneva, Nairobi and New York) to the Dispute Tribunal and establish nine new posts (3 P-3, 3 P-2, 2 General Service (OL) and 1 Local level) to support the additional full-time judges effective 1 January 2011. The aforementioned capacity was initially approved by the General Assembly in its resolution 63/253 for a period of one year effective 1 July 2009. This arrangement was further extended for a period of one year through the use of the authority for limited budgetary discretion granted to the Secretary-General. The proposal is to regularize the temporary capacity that is currently available to the Dispute Tribunal;

(b) With respect to both the Dispute Tribunal and the Appeals Tribunal, the Secretary-General recommends that adequate funds be made available to allow for the translation of all judgements in both working languages of the United Nations and into the official language in which the original application was submitted. The Secretary-General further recommends that adequate funds be made available to provide for interpretation, as needed, in hearings of the Dispute Tribunal and the Appeals Tribunal;

(c) With respect to the Office of Staff Legal Assistance, for the reasons set out in paragraphs 57 to 64 of this report, the Secretary-General recommends that the Office of Staff Legal Assistance be strengthened with three P-4 posts (Regional Coordinating Counsel in Geneva and Nairobi and a Deputy to the Chief of the Office of Staff Legal Assistance in New York), and one General Service (OL) post in Geneva and three Local level posts (one each in Nairobi, Beirut and Addis Ababa) effective 1 January 2011. In addition, the Secretary-General recommends the establishment of one P-3 and one National General Service post in the regional field service centre in Entebbe effective 1 January 2011, which would be funded from the budget for the support account for peacekeeping operations for the period from 1 July 2010 to 30 June 2011, and the related costs would be reported in the context of the

performance report relating to the support account for peacekeeping operations for the period from 1 July 2010 to 30 June 2011;

(d) With respect to the Administrative Law Section, for the reasons set out in paragraphs 87 to 92 of this report, the Secretary-General recommends that the General Assembly approve three new posts (1 P-4 and 2 P-3) in the Administrative Law Section effective 1 January 2011 to regularize the temporary capacity that has been provided to date under the authority for limited budgetary discretion granted to the Secretary-General;

(e) With respect to the Office of Legal Affairs, in order to meet the substantially increased demand for legal services in the new system and for the reasons set out in paragraphs 117 to 130 of this report, the Secretary-General recommends that the General Assembly approve eight new posts (3 P-4, 3 P-3 and 2 General Service (OL)) in the General Legal Division effective 1 January 2011 to regularize the temporary capacity that had been provided to date under the authority for limited budgetary discretion granted to the Secretary-General;

(f) With respect to travel entitlements for the Appeals Tribunal judges, the Secretary-General recommends that travel privileges that were provided to the former judges of the United Nations Administrative Tribunal be accorded to the Appeals Tribunal judges, for the reasons set out in paragraphs 154 to 163 of this report.

242. Accordingly, should the General Assembly agree with the above proposals, additional resource requirements in the amount of $7,627,500 would be considered in accordance with the provisions governing the contingency fund in accordance with the terms of Assembly resolutions 41/213 and 42/211. In this regard, it is recalled that the Assembly, in its resolution 63/266, approved a contingency fund for the biennium 2010-2011 in the amount of $36.5 million. The balance in the contingency fund following decisions taken by the Assembly during the sixty-fourth session amounts to $28,586,900.

243. All new posts reflected in the present report are proposed to be established as from 1 January 2011. Given that the Advisory Committee on Administrative and Budgetary Questions in paragraph 20 of its first report on the proposed programme budget for the biennium 2008-2009 (A/62/7) recommended that information on the delayed impact of posts should be reflected in any new proposals, the Assembly may wish to note that the additional requirements for the full costing of the proposed 27 new posts in the biennium 2012-2013 are currently estimated at $7,709,400 under section 1, Overall policymaking, direction and coordination $3,612,000, section 8, Legal affairs $2,184,300, section 28C, Office of Human Resources Management $910,800, and section 35, Staff assessment $1,002,300, to be offset by an equivalent amount under Income section 1, Income from staff assessment.

VI. Conclusions and actions to be taken by the General Assembly

244. **The Secretary-General has prepared the present report after having held consultations with staff and management, including a dedicated session of the Staff Management Coordination Committee. He considers that the recommendations contained within will provide necessary additional strength**

to the new internal justice system, which already enjoys the confidence of both staff and management. He requests the General Assembly to give due consideration to the above proposals and to approve the resources necessary to ensure their implementation.

245. **Accordingly, should the General Assembly agree with the proposals contained in the present report for additional resources, it may wish:**

(a) **To approve the establishment of 27 new posts (7 P-4, 8 P-3, 3 P-2, 5 General Service (Other level) and 4 Local level) effective 1 January 2011 under the programme budget for the biennium 2010-2011;**

(b) **To appropriate a total amount of $7,627,500 under the programme budget for the biennium 2010-2011, comprising increases under section 1, Overall policymaking, direction and coordination ($2,006,000); section 2, General Assembly and Economic and Social Council affairs and conference management ($3,730,800); section 8, Legal affairs ($657,400); section 17, Economic and social development in Africa ($38,100); section 21, Economic and social development in Western Asia ($38,100); section 28C, Office of Human Resources Management ($269,800); section 28D, Office of Central Support Services ($325,200); section 28E, Administration, Geneva ($133,700); section 28G, Administration, Nairobi ($133,700); and an increase under section 36, Staff assessment ($294,700), to be offset by a corresponding amount under income section 1, Income from staff assessment. The provision would represent a charge against the contingency fund; and**

(c) **To approve the establishment of a post at the P-3 level and a National General Service post in the regional field service centre in Entebbe effective 1 January 2011 to be funded from the budget for the support account for peacekeeping operations for the period from 1 July 2010 to 30 June 2011, and the related costs to be reported in the context of the performance report relating to the support account for peacekeeping operations for the period from 1 July 2010 to 30 June 2011.**

Annex I

Detail financial implications

Table 1
Programme budget for the biennium 2010-2011: requirements by budget section
(In thousands of United States dollars)

	*2010-2011 approved appropriation**	*Change*	*Revised 2010-2011 estimate*	*Post change*
1. Overall policymaking, direction and coordination	101 004.3	2 006.0	103 010.3	16
2. General Assembly and Economic and Social Council affairs and conference management	676 592.2	3 730.8	680 323.0	
8. Legal affairs	45 845.0	657.4	46 502.4	8
17. Economic and social development in Africa	132 697.1	38.1	132 735.2	0
21. Economic and social development in Western Asia	66 602.8	38.1	66 640.9	
28C. Office of Human Resources Management	74 775.9	269.8	75 045.7	3
28D. Office of Central Support Services	174 779.1	325.2	175 104.3	
28E. Administration, Geneva	121 680.1	133.7	121 813.8	
28G. Administration, Nairobi	32 457.9	133.7	32 591.6	
36. Staff assessment	517 285.2	294.7	517 579.9	
Total	**1 943 719.6**	**7 627.5**	**1 951 347.1**	**27**

* Initial appropriation, including resources approved at the first part of the resumed sixty-fourth session of the General Assembly.

Table 2
Programme budget for the biennium 2010-2011: requirements by object of expenditure
(In thousands of United States dollars)

	Resources		
	*2010-2011 approved appropriation**	*Change*	*Revised 2010-2011 estimate*
Posts	959 271.7	1 941.6	961 213.3
Other staff costs	89 114.5	3 730.8	92 845.3
Non-staff compensation	3 563.5	761.0	4 324.5
Consultants and experts	7 680.8	—	7 680.8
Travel of representatives	10 789.1	87.9	10 877.0
Travel of staff	9 197.3	—	9 197.3
Contractual services	81 250.0	63.7	81 313.7
General operating expenses	158 858.8	636.5	159 495.3
Hospitality	607.5	—	607.5
Supplies and materials	17 812.0	15.0	17 827.0
Furniture and equipment	18 040.6	96.3	18 136.9

	Resources		
	*2010-2011 approved appropriation**	*Change*	*Revised 2010-2011 estimate*
Grants and contributions	70 248.6	—	70 248.6
Staff assessment	517 285.2	294.7	517 579.9
Total	**1 943 719.6**	**7 627.5**	**1 951 347.1**

* Initial appropriation, including resources approved at the first part of the resumed sixty-fourth session of the General Assembly.

Table 3
Programme budget for the biennium 2010-2011: post-requirements

Grade	*2010-2011 approved appropriation**	*Post change*	*Revised 2010-2011 estimate*
Professional category and above			
USG/DSG	9		9
ASG	7		7
D-2	27		27
D-1	76		76
P-5	341		341
P-4/3	1 193	15	1 208
P-2/1	144	3	147
Subtotal	**1 797**	**18**	**1 815**
General Service category			
Principal level	144		144
Other level	1 354	5	1 359
Subtotal	**1 498**	**5**	**1 503**
Other categories			
Security Service			
Local level	551	4	555
Field Service	3		3
National Officer	17		17
Trades and Crafts	169		169
Subtotal	**740**	**4**	**744**
Total	**4 035**	**27**	**4 062**

* Initial appropriation, including resources approved at the first part of the resumed sixty-fourth session of the General Assembly.

Annex II

Compensation awarded by the United Nations Dispute Tribunal

United Nations Dispute Tribunal (Geneva)

2009 judgements

United Nations Dispute Tribunal Judgement No.	*Applicant's last name*	*Registry*	*Compensation awarded*
UNDT/2009/001	TSONEVA	GVA	N/A
UNDT/2009/003	HEPWORTH	GVA	N/A
UNDT/2009/007	REES	GVA	US$ 0
UNDT/2009/008	OSMAN	GVA	US$ 0
UNDT/2009/013	PARKER	GVA	Three months' net base salary at the P-4 level under art. 10.5 (b) of the statute; two months' net base salary at the P-4 level under art. 10.5 (a) of the statute (compensation as an alternative to rescission)
UNDT/2009/014	PARKER	GVA	N/A
UNDT/2009/019	BALESTRIERI	GVA	N/A
UNDT/2009/021	CAMPOS	GVA	N/A
UNDT/2009/023	SHEYKHIYANI	GVA	N/A (withdrawal)
UNDT/2009/026	MEZOUI	GVA	N/A
UNDT/2009/029	GONZALEZ-RUIZ and BUSCAGLIA	GVA	N/A
UNDT/2009/031	DIALLO	GVA	N/A
UNDT/2009/037	JOHNSON	GVA	N/A
UNDT/2009/038	ANDRYSEK	GVA	CHF 9,000.00 under art. 10.5 (a) of the statute (compensation as an alternative to rescission)
UNDT/2009/039	MEBTOUCHE	GVA	CHF 9,000.00 under art. 10.5 (a) of the statute (compensation as an alternative to rescission)
UNDT/2009/040	ARDISSON	GVA	CHF 8,000.00 under art. 10.5 (a) of the statute (compensation as an alternative to rescission)
UNDT/2009/041	IPPOLITO	GVA	CHF 8,000.00 under art. 10.5 (a) of the statute (compensation as an alternative to rescission)
UNDT/2009/042	ISHAK	GVA	N/A
UNDT/2009/043	LUNSHOF	GVA	N/A (withdrawal)
UNDT/2009/044	MUTUTA	GVA	CHF 8,000.00 under art. 10.5 (a) of the statute (compensation as an alternative to rescission)
UNDT/2009/045	SOLANKI	GVA	CHF 8,000.00 under art. 10.5 (a) of the statute (compensation as an alternative to rescission)
UNDT/2009/046	ILIC	GVA	N/A
UNDT/2009/047	JOSHI	GVA	N/A
UNDT/2009/048	TSONEVA No. 1	GVA	N/A
UNDT/2009/049	VANGELOVA	GVA	N/A
UNDT/2009/057	DIAGNE et al.	GVA	N/A
UNDT/2009/059	MACNEIL	GVA	N/A

United Nations Dispute Tribunal Judgement No.	*Applicant's last name*	*Registry*	*Compensation awarded*
UNDT/2009/061	BIMO and BIMO	GVA	N/A
UNDT/2009/062	HASTOPALLI; STIPLASEK	GVA	N/A
UNDT/2009/065	SCHOOK	GVA	N/A
UNDT/2009/066	PARKER	GVA	N/A
UNDT/2009/070	PLANAS	GVA	N/A
UNDT/2009/071	CORCORAN	GVA	US$ 0
UNDT/2009/072	ISHAK No. 2	GVA	N/A
UNDT/2009/077	HOCKING/JARVIS/McINTYRE	GVA	N/A
UNDT/2009/083	BYE	GVA	N/A
UNDT/2009/084	WU	GVA	Two months' net base salary at the P-4 level
UNDT/2009/085	BOUTRUCHE	GVA	N/A
UNDT/2009/086	PLANAS	GVA	N/A
UNDT/2009/087	MEZOUI No. 2	GVA	N/A
UNDT/2009/089	WILKINSON; CORBAXHI; FISTRIC; GURRA; JOLLDASHI; KAKELI; PETRONE; REKA; TAKACI	GVA	N/A
UNDT/2009/092	CALVANI	GVA	US$ 0
UNDT/2009/093	SYED	GVA	N/A
UNDT/2009/094	BERNARD	GVA	N/A

2010 judgements

United Nations Dispute Tribunal Judgement No.	*Applicant's last name*	*Registry*	*Compensation awarded*
UNDT/2010/005	AZZOUNI	GVA	N/A
UNDT/2010/007	SAKA	GVA	N/A
UNDT/2010/008	GLAVIND	GVA	N/A
UNDT/2010/009	ALLEN	GVA	US$ 12,000.00
UNDT/2010/013	PELLET	GVA	N/A
UNDT/2010/014	UMPLEBY	GVA	N/A
UNDT/2010/019	SAMARDZIC; TADIC-MIHALJCIC; MITROVIC; MARTIC; KOVACEVIC	GVA	N/A
UNDT/2010/021	DE PORRES	GVA	N/A
UNDT/2010/022	FAGUNDES	GVA	N/A
UNDT/2010/023	LESAR	GVA	N/A
UNDT/2010/025	KITA	GVA	N/A
UNDT/2010/027	CALVANI	GVA	N/A
UNDT/2010/028	SHAKIR	GVA	N/A
UNDT/2010/029	MOUSSA	GVA	N/A
UNDT/2010/031	BIDNY	GVA	N/A
UNDT/2010/032	TRAJANOVSKA	GVA	N/A
UNDT/2010/035	MEGERDITCHIAN	GVA	Lump sum equivalent to three months' net base salary at the G-5 level (GVA salary scale)
UNDT/2010/047	SAAB-MEKKOUR	GVA	N/A

United Nations Dispute Tribunal Judgement No.	*Applicant's last name*	*Registry*	*Compensation awarded*
UNDT/2010/050	KADDOURA	GVA	Eight days special post allowance from G-6 to P-2
UNDT/2010/058	MOLARI	GVA	N/A
UNDT/2010/063	WEILER	GVA	Four months' net base salary at the G-5, step 12, level (GVA salary scale)
UNDT/2010/064	FUENTES	GVA	CHF 24,500.00
UNDT/2010/066	SAFWAT	GVA	N/A
UNDT/2010/067	McKAY	GVA	N/A
UNDT/2010/070	FARRAJ	GVA	US$ 45,000.00 under 10.5 (a) (compensation as an alternative to rescission)
UNDT/2010/075	GHAHREMANI	GVA	N/A
UNDT/2010/076	GHAHREMANI	GVA	N/A
UNDT/2010/077	SIMS	GVA	N/A
UNDT/2010/079	KADRI	GVA	N/A (withdrawal)
UNDT/2010/083	BARNED	GVA	N/A
UNDT/2010/085	ISHAK	GVA	N/A
UNDT/2010/088	TACONET	GVA	N/A
UNDT/2010/090	SOLOMON	GVA	N/A
UNDT/2010/092	CHAUVEAU-BAIS	GVA	Compensation settled by the parties
UNDT/2010/098	GABALDON	GVA	N/A
UNDT/2010/099	CORCORAN	GVA	N/A (withdrawal)
UNDT/2010/100	ISKANDAR	GVA	N/A
UNDT/2010/101	PLANAS No. 3	GVA	N/A (withdrawal)
UNDT/2010/102	ABU-HAWAILA	GVA	N/A
UNDT/2010/103	CAMPOS	GVA	N/A (withdrawal)
UNDT/2010/104	KAPSOU	GVA	N/A
UNDT/2010/106	EID	GVA	US$ 29,991.23 and LBP 9,552,660.00 with interest rates
UNDT/2010/108	LARKIN No. 1 and No. 2	GVA	Four months' net base salary at the G-6 level (London salary scale)
UNDT/2010/109	LARKIN No. 3 and No. 4	GVA	N/A
UNDT/2010/111	ELASOUD	GVA	N/A
UNDT/2010/112	BUSCAGLIA	GVA	N/A

United Nations Dispute Tribunal (Nairobi)

2009 judgements

United Nations Dispute Tribunal Judgement No.	*Applicant's last name*	*Registry*	*Compensation awarded*
UNDT/2009/001	CAMPOS	NBI	N/A
UNDT/2009/016	TADONKI	NBI	Half salary from 1 September 2009 until a final determination has been made
UNDT/2009/017	KASMANI	NBI	US$ 0
UNDT/2009/035	CALDARONE	NBI	N/A
UNDT/2009/033	ONANA	NBI	US$ 0
UNDT/2009/053	ADRIAN	NBI	US$ 0
UNDT/2009/054	KASIRIM	NBI	N/A
UNDT/2009/056	HIJAZ	NBI	N/A
UNDT/2009/058	TADONKI	NBI	Half salary from 1 September 2009 until final determination of the case
UNDT/2009/063	KASMANI	NBI	US$ 0
UNDT/2009/060	LUTTA	NBI	US$ 0
UNDT/2009/069	GHOSN	NBI	N/A
UNDT/2009/074	LUVAI	NBI	N/A
UNDT/2009/081	MACHARIA	NBI	N/A
UNDT/2009/088	NOGUIERA	NBI	24 months' net base salary, at the level he was entitled to before his appointment was not renewed (D-1 level)
UNDT/2009/091	COULIBALY	NBI	N/A
UNDT/2009/090	TEFERRA	NBI	US$ 0
UNDT/2009/020	HUSSEIN	NBI	N/A

Notes:
"N/A" — ruling for the respondent
"US$ 0" — ruling for the applicant, but nothing was awarded
"Awaiting submissions on compensation" — ruling for the applicant, but the amount of compensation is awaiting determination
"Compensation settled by the parties" — ruling for the applicant, but the issue of compensation was settled by the parties without further adjudication
"GVA" — Geneva
"NBI" — Nairobi.

2010 judgements

United Nations Dispute Tribunal Judgement No.	*Applicant's last name*	*Registry*	*Compensation awarded*
UNDT/2010/002	XU	NBI	Six (6) months' net base salary at the P-4 level
UNDT/2010/010	ANDATI-AMWAYI	NBI	N/A
UNDT/2010/017	NWUKE	NBI	N/A
UNDT/2010/018	D'HELLENCOURT	NBI	N/A
UNDT/2010/024	DIAKITE	NBI	N/A
UNDT/2010/036	SANWIDI	NBI	Judgement for the applicant, amount of compensation in UNDT Judgement No. UNDT/2010/061
UNDT/2010/037	SETHIA	NBI	N/A
UNDT/2010/038	ATTANDI	NBI	N/A
UNDT/2010/041	LIYANARACHCHIGE	NBI	N/A
UNDT/2010/045	MALLICK	NBI	Case settled by the parties. Terms unknown to UNDT
UNDT/2010/046	TRA-BI	NBI	N/A
UNDT/2010/048	ATOGO	NBI	N/A
UNDT/2010/049	ABDALLAH	NBI	N/A
UNDT/2010/053	MMATA	NBI	(i) Rescission of the administrative decision, reinstatement of the Applicant and payment of all lost earnings from the date of his separation to the date of his reinstatement with interest at 8 per cent; or (ii) compensation for lost earnings from the date of Applicant's separation to the date of the judgement with interest at 8 per cent and compensation of two years' net base salary at the rate in effect on the date of his separation from service with interest at 8 per cent
UNDT/2009/054	NWUKE	NBI	N/A
UNDT/2010/056	MASRI	NBI	Lost earnings from date of summary dismissal (11 January 2008) to the date of reinstatement at FS-4 level with 8 per cent interest (alternatively, two years' net base salary at the rate in effect on the date of the applicant's separation from service, with interest payable at 8 per cent per annum as from 90 days from the date of distribution of the Judgement until payment is effected). Applicant to be demoted by 4 steps
UNDT/2010/057	IANELLI	NBI	Assignment and relocation grants to be paid, at the rate established for a staff member who is at the duty station with his spouse, including interest at the rate of 8 per cent per annum from the date the payments fell due
UNDT/2010/061	SANWIDI	NBI	Lost earnings from the date of his summary dismissal (11 January 2008) to the date of his reinstatement with interest at 8 per cent less US$ 2,600 per month for the said period. Two years' net base salary in lieu of reinstatement with interest payable at 8 per cent per annum as from 90 days from the date of distribution of this Judgement until payment is effected (P-4 level)

United Nations Dispute Tribunal Judgement No.	*Applicant's last name*	*Registry*	*Compensation awarded*
UNDT/2010/072	ADRIAN	NBI	N/A
UNDT/2010/084	TEFERRA	NBI	Judgement on compensation pending
UNDT/2010/089	FRECHON	NBI	Awaiting submissions on compensation
UNDT/2010/096	WOLDESELASSIE	NBI	N/A
UNDT/2010/097	LUTTA	NBI	Three months (of his current) net base salary (GS-6 level) as compensation for the loss of chance for being barred for consideration for the two posts with interest at 8 per cent beginning 90 days from the date of issuance of this Judgement until payment is effected. US$ 4,760 as compensation for his travel costs for the period 20 November 2007 to 2 May 2009 with interest at 8 per cent beginning 90 days from the date of issuance of this Judgement until payment is effected. Six months (of his current) net base salary as compensation for moral damages with interest at 8 per cent beginning 90 days from the date of issuance of this Judgement until payment is effected
UNDT/2010/105	KOUMOIN	NBI	N/A
UNDT/2010/052	LUTTA	NBI	Compensation fixed in Judgement 2010/097
UNDT/2010/073	ELBADAWI	NBI	N/A
UNDT/2010/003	MWACHULLAH	NBI	N/A
UNDT/2010/	SAADEH	NBI	N/A

United Nations Dispute Tribunal (New York)

2009 judgements

United Nations Dispute Tribunal Judgement No.	*Applicant's last name*	*Registry*	*Compensation awarded*
UNDT/2009/015	ABBOUD	NY	N/A
UNDT/2009/018	D'HOOGE	NY	N/A
UNDT/2009/022	KASYANOV	NY	N/A
UNDT/2009/024	KODA	NY	N/A
UNDT/2009/027	SINA	NY	N/A
UNDT/2009/050	KODA	NY	N/A
UNDT/2009/052	ROSCA	NY	N/A
UNDT/2009/064	BUCKLEY	NY	N/A
UNDT/2009/073	WYSOCKI	NY	N/A
UNDT/2009/075	CASTELLI	NY	Relocation grant and retroactive interest
UNDT/2009/078	KOH	NY	N/A
UNDT/2009/082	KRIOUTCHKOV	NY	N/A
UNDT/2009/095	SEFRAOUI	NY	N/A
UNDT/2009/097	LEWIS	NY	N/A

United Nations Dispute Tribunal Judgement No.	*Applicant's last name*	*Registry*	*Compensation awarded*
UNDT/2009/002	JENNINGS	NY	N/A
UNDT/2009/036	MORSY	NY	N/A
UNDT/2009/055	BHATIA	NY	N/A
UNDT/2009/067	GABRIEL	NY	N/A
UNDT/2009/068	BLANC	NY	N/A
UNDT/2009/076	MIYAZAKI	NY	US$ 0
UNDT/2009/079	ABUBAKR	NY	N/A
UNDT/2009/080	JENNINGS	NY	N/A
UNDT/2009/096	UTKINA	NY	N/A
UNDT/2009/006	MANOKHIN	NY	N/A
UNDT/2009/009	KOUKA	NY	N/A
UNDT/2009/004	FRADIN DE BELLARBE	NY	N/A
UNDT/2009/011	SEFRAOUI	NY	N/A
UNDT/2009/012	ADORNA	NY	N/A
UNDT/2009/025	JAMES	NY	Three months' salary at G-6 level VIII
UNDT/2009/028	CRICHLOW	NY	One month net base salary
UNDT/2009/030	HASTINGS	NY	N/A
UNDT/2009/034	SHASHAA	NY	Compensation settled by the parties
UNDT/2009/051	COSTA	NY	N/A

2010 judgements

United Nations Dispute Tribunal Judgement No.	*Applicant's last name*	*Registry*	*Compensation awarded*
UNDT/2010/001	ABBOUD	NY	US$ 20,000
UNDT/2010/004	DUMORNAY	NY	N/A
UNDT/2010/006	PARMAR	NY	N/A
UNDT/2010/011	CASTELLI	NY	(i) 8 per cent per annum of the relocation grant; (ii) parties are to jointly submit a draft order to the Tribunal awarding the appropriate sum plus interest calculated
UNDT/2010/012	ROGER	NY	N/A
UNDT/2010/015	WARREN	NY	US$ 20,546 plus interest at 8 per cent per annum from 25 March 2008 to the date of payment
UNDT/2010/016	FEDOROFF	NY	N/A
UNDT/2010/026	KASYANOV	NY	(i) US$ 59,932; and (ii) additional amount of US$ 20,000 if respondent chooses not to perform specific performance ordered
UNDT/2010/030	ABBOUD	NY	US$ 0
UNDT/2010/033	ZHANG	NY	N/A
UNDT/2010/034	CABRERA, WALTER; STREB, BRIAN	NY	N/A

United Nations Dispute Tribunal Judgement No.	*Applicant's last name*	*Registry*	*Compensation awarded*
UNDT/2010/039	BEAUDRY	NY	Awaiting submissions on compensation
UNDT/2010/040	KOH	NY	US$ 2,000
*Order No. 57	KOH	NY	US$ 107,107.60
UNDT/2010/042	GOMEZ	NY	(i) Two months' net base pay; (ii) adjustment and compensation for various entitlements (amount to be determined by the parties); (iii) additional compensation in the amount of US$ 8,998
UNDT/2010/043	IHEKWABA	NY	N/A
UNDT/2010/044	D'HÓOGE	NY	Compensation settled by the parties
UNDT/2010/051	LENCI	NY	N/A
UNDT/2010/054	AVINA	NY	N/A
UNDT/2010/055	ABBASI	NY	(i) US$ 30,000; (ii) 12 months' net base salary at the rate applicable for the post of operations officer
UNDT/2010/059	ANTAKI	NY	US$ 1,000
UNDT/2010/060	SINA	NY	US$ 500
UNDT/2010/062	ROSCA	NY	N/A
UNDT/2010/065	KRIOUTCHKOV	NY	US$ 500
UNDT/2010/068	CHEN	NY	(i) Difference in salary, allowances and other entitlements between her current level of P-3 and step and the P-4 level and step to which she was entitled from 17 August 2006 until her date of retirement, including the equivalent of the loss in pension rights; (ii) compensation equivalent to six months' net base salary at the P-4 level and step to which she was entitled
UNDT/2010/069	ORDELT	NY	N/A
UNDT/2010/071	HASTINGS	NY	(i) US$ 5,000; (ii) 10 per cent of the difference between the salary she actually carries and that she would have received in the D-2 position on a continuous basis; (iii) 10 per cent of any additional allowances and benefits she would have received at the D-2 level, including adjustment of her pension contributions and consequent retirement benefits
UNDT/2010/074	MONAGAS	NY	N/A
UNDT/2010/078	MIYAZAKI	NY	US$ 0
UNDT/2010/080	BERTUCCI	NY	Awaiting submissions on compensation
UNDT/2010/081	KHAN	NY	N/A
UNDT/2010/082	APPLICANT	NY	N/A
UNDT/2010/086	ABBASSI	NY	N/A
UNDT/2010/087	SPRAUTEN	NY	Awaiting submissions on compensation
UNDT/2010/091	ISLAM	NY	N/A
UNDT/2010/093	KAMANOU	NY	N/A
UNDT/2010/094	BERTUCCI	NY	US$ 500
UNDT/2010/095	ROLLAND	NY	US$ 500

United Nations Dispute Tribunal Judgement No.	*Applicant's last name*	*Registry*	*Compensation awarded*
UNDT/2010/107	RIQUELME	NY	N/A
UNDT/2010/110	KODA	NY	N/A
UNDT/2010/113	FAYEK	NY	Awaiting submissions on compensation
UNDT/2010/114	ALAUDDIN	NY	Awaiting submissions on compensation
UNDT/2010/115	APPLICANT	NY	N/A
UNDT/2010/116	MESSINGER	NY	US$ 5,000
UNDT/2010/117	BERTUCCI	NY	US$ 655,000

Annex III

Compensation awarded by the United Nations Appeals Tribunal

2010 judgements

United Nations Appeals Tribunal Judgment No.	*Appellant's last name*	*Compensation awarded*
2010-UNAT-001	CAMPOS	
2010-UNAT-002	PARKER	The Appeals Tribunal reversed the Dispute Tribunal decision that the Organization could opt for payment of five months' salary as an alternative to reinstatement.
2010-UNAT-003	FRECHON	
2010-UNAT-004	NEVILLE	
2010-UNAT-005	TADONKI	
2010-UNAT-006	HUSSEIN	
2010-UNAT-007	EL-ZAIM	
2010-UNAT-008	ONANA	
2010-UNAT-009	JAMES	The Appeals Tribunal set aside the Dispute Tribunal order for compensation of three months' net base salary.
2010-UNAT-010	TADONKI	
2010-UNAT-011	KASMANI	
2010-UNAT-012	PARKER	
2010-UNAT-013	SCHOOK	
2010-UNAT-014	LUVAI	
2010-UNAT-015	MACHARIA	
2010-UNAT-016	TEBEYENE	
2010-UNAT-017	SKODA	
2010-UNAT-018	MAHDI	
2010-UNAT-019	CARRANZA	
2010-UNAT-020	ADWAN	
2010-UNAT-021	ASAAD	Compensation equivalent to the difference between the salary at grade 8 and the salary at grade 14 for the period from 1 July 2003 to 20 January 2004, and compensation equivalent to one month's salary at grade 14. In addition, the Appeals Tribunal ordered Asaad's reinstatement, or in the alternative, payment of six months' net base pay.
2010-UNAT-022	ABU HAMDA	Refund of loss of salary suffered by the appellant as result of his demotion.
2010-UNAT-023	NOCK	
2010-UNAT-024	HANIYA	
2010-UNAT-025	DOLEH	Reinstatement or, in the alternative, payment of two years' net base pay.
2010-UNAT-026	SHANKS	
2010-UNAT-027	BUSTANJI	

United Nations Appeals Tribunal Judgment No.	*Appellant's last name*	*Compensation awarded*
2010-UNAT-028	MASLAMANI	
2010-UNAT-029	EL KHATIB	
2010-UNAT-030	TABARI	Retroactive payment of special occupation allowance.
2010-UNAT-031	JARVIS	
2010-UNAT-032	CALVANI	
2010-UNAT-033	MEBTOUCHE	The Appeals Tribunal set aside the Dispute Tribunal order for payment of CHF 9,000 and increased it to three months' net base salary.
2010-UNAT-034	MUTHUSWAMI ET AL.	
2010-UNAT-035	CRICHLOW	
2010-UNAT-036	COSTA	
2010-UNAT-037	CASTELLI (Respondent)	
2010-UNAT-038	ADWAN	
2010-UNAT-039	MAGHARI	
2010-UNAT-040	AQEL	
2010-UNAT-041	BALESTRIERI	
2010-UNAT-042	WU (Respondent)	
2010-UNAT-043	MEZOUI	
2010-UNAT-044	SOLANKI	
2010-UNAT-045	TSONEVA	
2010-UNAT-046	VANGELOVA	
2010-UNAT-047	ATTANDI	
2010-UNAT-048	SEFRAOUI (Respondent)	
2010-UNAT-049	PLANAS	
2010-UNAT-050	ISHAK	
2010-UNAT-051	ILIC	
2010-UNAT-052	ARDISSON	
2010-UNAT-053	XU (Respondent)	
2010-UNAT-054	ATOGO	
2010-UNAT-055	HIJAZ	
2010-UNAT-056	SHAKIR	
2010-UNAT-057	FAGUNDES	
2010-UNAT-058	ANDATI-AMWAYI	
2010-UNAT-059	WARREN (Respondent)	The Appeals Tribunal ordered payment of pre-judgement interest at the United States prime rate from the time when the payment fell due to 60 days after the issuance of the judgement. It also ordered additional 5 per cent interest from 60 days from date of distribution of the judgement until the payment was made. In this case, the amount of entitlement is not at issue.
2010-UNAT-060	WASSERTROM (Respondent)	

United Nations Appeals Tribunal Judgment No.	*Appellant's last name*	*Compensation awarded*
2010-UNAT-061	SYED	
2010-UNAT-062	BERTUCCI (Respondent)	
2010-UNAT-063/C	EL-KHATIB	
2010-UNAT-064/R	SHANKS	

Annex IV

Contracts and rules governing relationships between the United Nations and the various categories of non-staff personnel

A. United Nations

1. Secretary-General's Bulletin ST/SGB/177 of 19 November 1982 on policies for obtaining the services of individuals on behalf of the Organization provides, in paragraph 2, that "[i]ndividuals may be engaged as regular staff, temporary staff, individual contractors, consultants, participants in advisory meetings, technical cooperation personnel or as Operational, Executive and Administrative Services (OPAS). Their services are obtained through a letter of appointment under the appropriate series of United Nations Staff Rules, through a special service agreement or other contractual arrangement entered into directly with the person providing the service or, under certain circumstances, through a contract entered into between the Organization and an institution. Procedures for obtaining the services of individuals other than as regular staff shall be set out in administrative instructions".

B. Relevant administrative issuances of the United Nations

2. Following are relevant administrative issuances for the United Nations:

ST/SGB/177 of 19 November 1982, on policies for obtaining the services of individuals on behalf of the Organization

ST/AI/295 of 19 November 1982, on temporary staff and individual contractors

ST/AI/295/Amend.1 of 5 July 1995, on temporary staff and individual contractors

ST/AI/296 of 19 November 1982, on consultants and participants in advisory meetings

ST/AI/296/Amend.1 of 5 July 1995, on consultants and participants in advisory meetings

ST/AI/297 of 19 November 1982, on technical cooperation personnel and OPAS Officers

ST/AI/297/Add.1 of 7 December 1995, on technical cooperation personnel and OPAS Officers

ST/AI/327 of 23 January 1985, on institutional or corporate contractors

ST/AI/1999/7 of 26 August 1999, on consultants and individual contractors

ST/AI/1999/7/Amend.1 of 15 March 2006, on consultants and individual contractors

C. United Nations Development Programme and United Nations Office for Project Services

3. Following are relevant UNDP and UNOPS draft agreements:

UNDP Special Service Agreement for Individual Contractors

UNDP Service Contract for Individual Subscribers

UNDP Reimbursable Loan Agreement for Individual Consultants

UNDP Contract for Professional Consulting Services

UNOPS Individual Contractor Agreement 2010/IICA-SP/18799

UNOPS Administrative Instruction on Individual Contractor Agreement (ICA), AI/HRPG/2010/01, effective 1 May 2010

D. United Nations: dispute resolution clauses

4. Administrative instruction ST/AI/296 of 19 November 1982 on consultants and participants in advisory meetings provides:

> "33. In the event of any dispute arising out of, or in connection with, this contract, attempts should be made to settle the dispute by negotiation. If a settlement cannot be achieved in this way, the dispute shall be submitted to arbitration by a single arbitrator agreed to by both parties. Should the parties be unable to agree on a single arbitrator within 30 days of the request for arbitration, each party shall appoint an arbitrator and the two arbitrators thus appointed shall agree on a third. Failing such agreement the President of the United Nations Administrative Tribunal shall be requested to appoint the third arbitrator. The decision rendered in the arbitration shall constitute final adjudication of the dispute."

5. Administrative instruction ST/AI/1999/7/Amend.1 of 15 March 2006 on consultants and individual contractors contains an annex entitled "Contract for the services of a consultant or individual contractor". The attachment to this standard contract is entitled "General conditions of contracts for the services of Consultants or Individual Contractors". Paragraph 16 of that document provides:

> "16. Settlement of disputes
>
> Amicable Settlement: The United Nations and the Contractor shall use their best efforts to amicably settle any dispute, controversy or claim arising out of the Contract or the breach, termination or invalidity thereof. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the Conciliation Rules then obtaining of the United Nations Commission on International Trade Law ('UNCITRAL'), or according to such other procedure as may be agreed between the parties in writing.
>
> Arbitration: Any dispute, controversy or claim between the parties arising out of the Contract, or the breach, termination, or invalidity thereof, unless settled amicably, as provided above, shall be referred by either of the parties to arbitration in accordance with the UNCITRAL Arbitration Rules

then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. For all evidentiary questions, the arbitral tribunal shall be guided by the Supplementary Rules Governing the Presentation and Reception of Evidence in International Commercial Arbitration of the International Bar Association, 28 May 1983 edition. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Contract, order the termination of the Contract, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Contract, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 ('Interim Measures of Protection') and Article 32 ('Form and Effect of the Award') of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Contract, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate ('LIBOR') then prevailing, and any such interest shall be simple interest only. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy or claim".

6. ST/AI/327 of 23 January 1985, on institutional or corporate contractors provides:

"Arbitration

25. Any controversy or claim arising out of, or in accordance with the contract or any breach thereof, shall, unless it is settled by direct negotiation, be settled in accordance with the UNCITRAL Arbitration Rules currently in force. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy or claim".

7. ST/AI/295 of 19 November 1982, on temporary staff and individual contractors provides:

"Settlement of disputes

29. In the event of any dispute arising out of, or in connexion with, this contract, attempts should be made to settle the dispute by negotiation. If a settlement cannot be achieved in this way, the dispute shall be submitted to arbitration by a single arbitrator agreed to by both parties. Should the parties be unable to agree on a single arbitrator within 30 days of the request for arbitration, each party shall appoint an arbitrator and the two arbitrators thus appointed shall agree on a third. Failing such agreement, the President of the United Nations Administrative Tribunal shall be requested to appoint the third arbitrator. The decision rendered in the arbitration shall constitute final adjudication of the dispute".

E. UNDP and UNOPS: dispute resolution clauses

8. The UNDP Special Service Agreement for Individual Contractors provides:

"16. Settlement of disputes

Amicable Settlement: UNDP and the Individual contractor shall use their best efforts to amicably settle any dispute, controversy or claim arising out of the Agreement or the breach, termination or invalidity thereof. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the Conciliation Rules then obtaining of the United Nations Commission on International Trade Law ('UNCITRAL'), or according to such other procedure as may be agreed between the parties in writing.

Arbitration: Any dispute, controversy or claim between the parties arising out of the Agreement, or the breach, termination, or invalidity thereof, unless settled amicably, as provided above, shall be referred by either of the parties to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. For all evidentiary questions, the arbitral tribunal shall be guided by the Supplementary Rules Governing the Presentation and Reception of Evidence in International Commercial Arbitration of the International Bar Association, 28 May 1983 edition. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Agreement, order the termination of the Agreement, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Agreement, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 ('Interim Measures of Protection') and Article 32 ('Form and Effect of the Award') of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Agreement, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate ('LIBOR') then prevailing, and any such interest shall be simple interest only. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy or claim".

9. The UNDP Service Contract for individual subscribers provides:

"Settlement of disputes

Any claim or dispute relating to the interpretation or execution of the present contract which cannot be settled amicably will be settled by binding arbitration. UNCITRAL Arbitration Rules will apply. Binding arbitration must in all cases be preceded by a conciliatory procedure under UNCITRAL rules".

10. The UNDP Reimbursable Loan Agreement (RLA) for Individual Consultants provides:

"Article 22 — Arbitration

1. Any controversy or claim arising out of, or in connection with this RLA or any breach thereof, shall unless it is settled amicably by direct negotiation, be referred to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. Such arbitration shall be conducted under the auspices of the International Chamber of Commerce ICC (where contract activities are

conducted outside the United States of America) or the American Arbitration Association AAA (where the contract activities are more closely connected with the United States of America) which shall also serve as the Appointing Authority under the Rules.

2. All parties shall be bound by the arbitration award rendered in accordance with such arbitration, as the final adjudication of any such controversy or claim."

11. The UNDP Contract for Professional Consulting Services provides in paragraph 16:

"Settlement of disputes

Amicable Settlement

The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of, or relating to this Contract or the breach, termination or invalidity thereof. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then obtaining, or according to such other procedure as may be agreed between the parties.

Arbitration

Unless, any such dispute, controversy or claim between the Parties arising out of or relating to this Contract or the breach, termination or invalidity thereof is settled amicably under the preceding paragraph of this Article within sixty (60) days after receipt by one Party of the other Party's request for such amicable settlement, such dispute, controversy or claim shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining, including its provisions on applicable law. The arbitral tribunal shall have no authority to award punitive damages. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute."

12. We understand that UNOPS is currently revising its Standard Agreement for Individual Contractors. Its current standard agreement does not provide for a dispute resolution clause. It does contain the following privileges and immunities clause:

"13. Privileges and immunities of UNOPS

Nothing in or relating to this Agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including UNOPS, accorded to the United Nations pursuant to the General Convention or otherwise."

13. Pursuant to Administrative Instruction AI/HRPG/2010/01, the revised standard agreement will include the following dispute resolution clause:

"14.12 Any dispute resulting from the termination of an individual contractor agreement will be settled in accordance with the following rules.

14.12.1 Amicable Settlement: UNOPS and the Individual Contractor shall use their best efforts to amicably settle any dispute, controversy or claim arising out of the ICA or the breach, termination or invalidity thereof. Where the parties wish to seek such an amicable settlement through conciliation, the

conciliation shall take place in accordance with the Conciliation Rules then obtaining of the United Nations Commission on International Trade Law ('UNCITRAL'), or according to such other procedure as may be agreed between the parties in writing.

14.12.2 Arbitration: Any dispute, controversy or claim between the parties arising out of the ICA, or the breach, termination, or invalidity thereof, unless settled amicably, as provided in 14.12.1 above, shall be referred by either of the parties to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. For all evidentiary questions, the arbitral tribunal shall be guided by the Supplementary Rules Governing the Presentation and Reception of Evidence in International Commercial Arbitration of the International Bar Association, 28 May 1983 edition. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the ICA, order the termination of the ICA, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the ICA, as appropriate, all in accordance with the authority of the Arbitral Tribunal pursuant to Article 26 ('Interim Measures of Protection') and Article 32 ('Form and Effect of the Award') of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the ICA, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate ('LIBOR') then prevailing, and any such interest shall be simple interest only. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy or claim."